

Important Considerations:

THE AFFORDABLE CARE ACT AND THE MICHIGAN CHILD SUPPORT FORMULA



On March 23, 2010, the Affordable Care Act (ACA) was signed into law by President Barack Obama. Since then, much debate has surrounded the impact of the law as it relates to businesses and both insured and uninsured Americans.

The ACA is a set of health insurance reforms that requires all individuals to have health insurance by 2014.¹

According to the ACA, beginning January 1, 2014, if someone does not have a health plan that qualifies as minimum essential coverage, he or she may have to pay an annual fee that increases every year: from 1 percent of income (or \$95 per adult, whichever is higher) in 2014, to 2.5 percent of income (or \$695 per adult) in 2016. The fee for children is half the adult amount.²

HEALTH CARE PROVISIONS OF THE MICHIGAN CHILD SUPPORT FORMULA:

In Michigan, a child support obligation includes a calculated base support amount and health care expenses.³

Sections 3.04 and 3.05 of the Michigan Child Support Formula address a payer's obligation with regard to medical expenses and health insurance coverage.

Under § 3.05(B)(1), "[w]hen ordering child support, the court must order one or both parents to maintain health care coverage for the children if it is available at a reasonable cost as a benefit of employment, or when a self-employed parent maintains personal health care coverage."⁴

THE ACA AND THE MICHIGAN CHILD SUPPORT FORMULA:

Because every child support case necessarily involves medical care and/or health insurance coverage, the ACA may impact a support case:

Enrolling a Child in a Health Care Program Only the parent who claims the child on the parent's taxes can enroll the child in a state-based Medicaid program; likewise, a noncustodial parent who lives in a different state than the child cannot enroll the child in state-based Medicaid programs outside of the child's home state.

Tax Benefits In situations where parents alternate claiming their child as a dependent for tax purposes, the parent claiming the child may be eligible for an incentive if the child is enrolled in a health care program. If the court order in a child support case requires only one parent to provide health care, the other parent would never qualify for the tax benefit and the other parent would only qualify for it biannually.

"Reasonable Cost" Requirement 45 CFR 303.31 states that insurance for a child must be obtained if it is at a "reasonable cost," which is defined as 5 percent of a person's adjusted gross income unless state law orders otherwise. Under the ACA, however, an individual is required to have health insurance for the child if it is at a "reasonable cost," which is defined as 8 percent of *modified* adjusted gross income. (continued on page 5)

¹U.S. Centers for Medicare & Medicaid Services, USA.gov, <https://www.healthcare.gov/rights-protections-and-the-law/> (last visited Oct. 8, 2013).

²U.S. Centers for Medicare & Medicaid Services, USA.gov, <https://www.healthcare.gov/glossary/fee/> (last visited Oct. 8, 2013).

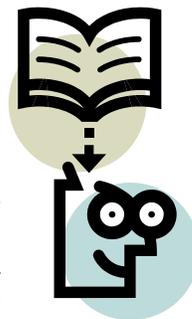
³Michigan Child Support Formula 3.01(A)(1)-(2)

⁴Michigan Child Support Formula 3.05(B)(1)

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Information that you may find useful...



In September 2013, the Michigan Supreme Court adopted two new Michigan Court Rules (MCR) and an Administrative Order, designed to ensure meaningful access to Michigan's courts for all citizens, regardless of language barriers. MCR 1.111 establishes requirements for all courts to provide court-appointed foreign language interpreters for persons with limited English proficiency. MCR 8.127 creates a board to recommend court interpreter certification requirements. Administrative Order No. 2013-8 instructs all courts to submit a Language Access Plan to the State Court Administrative Office (SCAO). For more information on the new court rules and the administrative order, please see SCAO Administrative Memorandum 2013-02, Adoption of Foreign Language Court Rules and Administrative Order or visit SCAO's Language Access Program website.

The list of Michigan Tribal Courts is located at:
<http://courts.mi.gov/courts/tribalcourts/pages/default.aspx>

The Intergovernmental Work Improvement Team created an Emancipation Spreadsheet detailing all 50 states' emancipation dates for child support orders, and what action a Michigan friend of the court or court staff must take to assist customers on our intergovernmental caseload. If a court or friend of the court office would like a copy of the emancipation spreadsheet, please contact Elizabeth Stomski at stomskie@courts.mi.gov.

On October 2, 2013, the Michigan Supreme Court issued Administrative Order No. 2013-12, Revised Caseflow Management Guidelines and Rescission of Administrative Order No. 2011-3. New caseflow management guidelines are effective January 1, 2014. If courts or friend of the court offices have questions regarding the new caseflow guidelines, please contact your Regional Administrator.

The 2013 FOC Model Handbooks are now available online at:
http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/focb_hbk.pdf

Courts wishing to order from the FOCB can contact Elizabeth Stomski at:
stomskie@courts.mi.gov

The Pundit provides information on current issues to Michigan child support staff. The Pundit is not intended to provide legal advice and does not represent the opinions of the Michigan Supreme Court or the State Court Administrative Office.

THE PUNDIT

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The Times - They Are a Changing - Part 2 *Adapting Mechanisms to Establish Paternity*

BY TONY MCDOWELL, JUDICIAL ADVISORY ASSISTANT TO HON. DUNCAN M. BEAGLE
7TH CIRCUIT FAMILY COURT



In part one of this article (see the [August 2013 edition of *The Pundit*](#)), I discussed the story of a young man who signed an affidavit of parentage and later found that he was not the biological father of the child. The unfortunate circumstances of this family's case demonstrate that the mechanisms used to establish paternity lack the necessary certainty, expediency, and permanency.

Fortunately, a pilot program is being developed to address the weaknesses in the current methods of establishing paternity. The program is likely to begin to be implemented in neglect court cases, and ideally, would eventually be carried out in local hospitals at the time of birth.

The pilot specifically targets the main weaknesses of the current system of establishing paternity and will attempt to provide certainty, expediency, and permanency. By asking the parties to submit to genetic testing, which is exceptionally accurate, the program will provide certainty that the legal father is also the biological father, unlike a signature on an affidavit of parentage. The pilot program will include a complaint, answer, waiver of summons, request for IV-D services, and a future date to finalize the custody judgment in one document, thus, providing more expediency than the current system under the Paternity Act. Finally, by providing early court involvement, services, and a legal father determination within months of signing the documents, the system will provide permanency for Michigan families.

The most important component of this paternity pilot project is currently an unnamed document, which for purposes of this article will be called "Request for Expedient Paternity Order" (REPO). The REPO has several components that will expedite the legal process, establish paternity with certainty, and provide the parents with a stipulated final order.

The REPO will contain all the required information for a paternity complaint and will be signed by both parties, acting as a waiver of the answer and summons requirements. By combining legal steps into one document, the process that currently takes months could be shortened significantly to just a matter of days.

In addition, the REPO will create a process to establish paternity with certainty. The REPO allows the parties to submit to genetic testing. If the results of the genetic testing demonstrate by 99 percent or greater probability that the alleged father is the biological father, the parties stipulate that the court may enter an Order of Filiation on the basis of these results. For funding purposes, the REPO will include a request for IV-D services, similar to a DHS-1201 form. Essentially, this form will allow the friend of the court (FOC) to proceed with the paternity establishment and setting child support.

Finally, the REPO will provide the parties with a specific date to meet with the FOC to enter a stipulated order regarding child support, custody, parenting time, and paternity. The form will create an automatic follow-up date, ensuring that an appropriate final order will be entered addressing both child support and parenting time.

The first phase of this pilot program is to make the REPO available to parents in neglect cases. The court will identify neglect cases with no legal father and will require both parties to appear at the next scheduled hearing to address paternity, where they will be given the opportunity to sign the REPO. Once signed, the Department of Human Services (DHS) case-worker assigned to the case can schedule a date for the parties to submit to genetic testing. Upon completion, the results would be forwarded to the FOC and the court. If the genetic testing results indicate a 99 percent or higher probability that the alleged father is the biological father, then the FOC would prepare an Order of Filiation for entry. Because the parties are in neglect court, the parties' parenting time would be controlled by the neglect case.

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***The Pundit is a publication of the Friend of the Court Bureau, State Court
Administrative Office, Michigan Supreme Court.
The Pundit is published quarterly and is paid for with IV-D funds.***



Spotlight on... NICOLE SUMMERS

ALLEGAN COUNTY FOC INVESTIGATOR

(FORMER FOCB LAW CLERK)



The Friend of the Court Bureau (FOCB) analyzes statistics; reviews laws, regulations, and court rules; and reviews grievances and responses to provide guidelines for friend of the court (FOC) operations. The FOCB provides management assistance to circuit courts statewide in efforts to improve local friend of the court operations. The FOCB also cooperates with the Department of Human Services Office of Child Support to work with FOC offices in providing Title IV-D services.

The law clerk position at the FOCB is a law student position, which involves making phone calls, mailing letters, and sending e-mails to answer questions from litigants about the FOC. In order to remain impartial, the law student position does not have case access and only answers general questions.

Nicole Summers is a former law clerk who held the position at the FOCB for two years. Nicole is now an investigator at the Allegan County FOC. *The Pundit* asked Nicole to provide some insight about her transition from the FOCB law clerk position to her position today that involves working directly with litigants at the friend of the court.

1. As an investigator, what are your general job responsibilities?

When a divorce or custody case is filed, a judge will order the parties to a conciliation conference, or if one has already occurred and there have been objections, the judge may order the FOC to meet with the parties and conduct a custody/parenting time investigation. I conduct both conciliation conferences and investigations. I meet with the parties in my office, most of the time together, but sometimes separately for various reasons, and ask them certain questions and whether they have any concerns about the other party's situation. The questions are different depending on if it is a conciliation conference or if it is an investigation. I also meet with the parties' minor children if they are five years old or older. On the basis of information gathered from those meetings and other factors, I prepare a recommendation regarding custody, parenting time, and child support. If the parties agree to all three recommendations while they are in my office for the conciliation conference, I will prepare a Stipulated Order that the parties will sign while they are in my office and that will become the order. If they cannot agree during a conciliation conference, I will prepare a temporary order regarding custody, parenting time, and child support and send it to the parties and their attorneys; they have an opportunity to object if they do not agree with my recommendation. Once the objection period has run and no one has filed an objection, I will send it to the judge for entry. For investigations, I only prepare recommendations.

Investigations are much more in-depth than conciliations. The investigation meeting itself takes approximately three to five hours to complete. An investigation of the case takes a week to complete and, then, another week or so to prepare a recommendation that is based on each best interest factor. When completed, the recommendation is sent on to the parties and the judge. The conciliation conference takes anywhere from one to three hours and about a week or so to look into possible issues and write up my recommendation. Looking into issues an investigation may entail includes such things as talking with Child Protective Services, receiving reference letters, speaking with probation officers, teachers, and counselors (if a signed release was given), and anything else that may be necessary to make an informed objective recommendation.

Additionally, there are times when I may be called to testify in court regarding my recommendation and the meeting that I had with the parties.

2. What did you learn while working at the FOCB?

I learned many things. I learned the basic and general options that litigants have before, during, and after an FOC case. I learned the policy perspective on how local FOCs operate or should operate. I learned the importance of giving litigants as much information as possible (but without giving legal advice), regarding their options because most litigants do not have attorneys and navigating their way through the legal system and the FOC can be complicated and confusing. I learned about the child support categories, or "buckets," thanks to Dan [Bauer] and his informative financial trainings.

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Important Considerations:

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The Affordable Care Act and the Michigan Child Support Formula**PERSPECTIVE FROM THE OFFICE OF CHILD SUPPORT:**

When asked about the ACA and its impact on Michigan's IV-D program, Amy Rebideaux of the Michigan Office of Child Support offered to go on record with *The Pundit*. Amy provided the following advice for Michigan's IV-D workers:

Michigan IV-D workers should understand that the ACA does not change *any* of the IV-D program requirements. The IV-D program continues to be required to set and enforce medical support orders for IV-D cases. Additionally, the National Medical Support Notice (NMSN) is still a required enforcement mechanism, and has not changed.

However, in light of the ACA, IV-D workers can assist the families in our program to meet both the obligation under ACA and the obligation under their court orders by learning about the ACA and considering the nuances of the act when setting and modifying medical support orders. IV-D workers should review the 2013 Michigan Child Support Formula supplement and follow the steps outlined to determine which parent should be required to cover the child. IV-D workers should understand that there may be significant barriers for one parent to provide insurance based on the availability of tax credits and the ability to claim a child as a dependent.

Additionally, IV-D workers can help families in our program by providing information that will help the families obtain coverage, including how to apply for Medicaid. As of October 1, 2013, Michigan residents have four ways to apply for Medicaid:

- The Health Insurance Marketplace
- MiBridges
- Federal paper application
- DHS-1426 that will be available at all Department of Human Services and Michigan Department of Community Health

OCS is planning to hold two conference calls later in the fall with the Centers of Medicare and Medicaid Services in order to provide more information about the ACA to IV-D staff. Additionally, the OCS is publishing a IV-D Memorandum about the ACA in early October. Readers are encouraged to monitor the OCS publications and announcements for updated information about the ACA.

For more questions about the Affordable Care Act and how it impacts Michigan's child support cases, please contact:

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****PLEASE INCLUDE "ACA INFO" IN THE SUBJECT LINE OF YOUR INQUIRY****

Below is a list of sources to obtain more information about the Affordable Care Act:

<http://www.hhs.gov/healthcare/rights/law/index.html>

<https://www.healthcare.gov/>

<http://www.whitehouse.gov/healthreform>

<http://www.hhs.gov/opa/affordable-care-act/index.html>

<http://www.whitehouse.gov/blog/2012/06/28/supreme-court-upholds-president-obamas-health-care-reform>

<http://www.whitehouse.gov/healthreform/myths-and-facts>

The Times - They Are a Changing - Part 2 Adapting Mechanisms to Establish Paternity

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By using this pilot program to establish paternity in neglect cases, the court and DHS will be more likely to provide permanency for the child. The court will

no longer have only one parent for placement, but instead will have two parents and their families for possible placement of the child. This new procedure will also remove the instability of a “nonbiological” father being established as the legal father without the father having had any genetic testing, as is the usual process with an affidavit of parentage. Also, another positive outcome of this project is that the abbreviated legal process will often allow paternity to be established before the neglect case is concluded.

Ideally, phase two of the pilot program will implement these procedures in local hospitals at the time of the child’s birth. If the parties agree to sign the REPO, then the genetic testing could occur in the hospital. If the results of the genetic testing identify the father, an Order of Filiation would be prepared by the FOC, just like the procedure used in the neglect cases. The REPO would also provide the parties with a date to meet with a caseworker to discuss child support. If the parties were able to agree on parenting time and custody, then the FOC could detail that agreement in the order and adjust the child support accordingly. Following the parties’ meeting with their caseworker, a final order disposing of all issues would be signed by the court. If the parties are unable to agree, the matter would be referred to the court for a hearing on parenting time and custody and to provide the parties with referrals to community agencies and counseling to improve the parties’ communication.

Implementation of the pilot program and use of the REPO in hospitals could increase the reliability of biological paternity on a much larger scale because if the pilot program is proven to be successful, this type of measurement could be eventually used statewide. Also, by providing the parents the opportunity to sign the REPO at the time of birth, it may be possible to establish paternity while the parties are on friendlier terms. As mentioned earlier, genetic testing will provide certainty to Michigan families, limiting the need for motions to revoke a nonbiological father’s paternity years later. By waiving much of the legal process, court orders can be entered and a solid foundation provided within months of a child’s birth. Referring the parties to the FOC will provide an opportunity for them to reach an agreement regarding child support and parenting time. In an earlier pilot program in Genesee County when unmarried parents were given the opportunity to reach an agreement with FOC assistance, parties reached an agreement approximately 97 percent of the time. Finally, the pilot program would allow unresolved issues to come before a family court judge for a hearing or for referrals to counseling or services if needed instead of the parties having to return to court to receive various services.

The current system for identifying paternity is not always providing swift and permanent paternity for Michigan families. This pilot program will attempt to directly address these problems. While there are sure to be questions and issues that will arise under a new system to more accurately assess paternity, this proposed pilot program promises to be a first step toward improved accuracy in establishing paternity for Michigan families.

Previous issues of the Pundit can be accessed at:

**[http://courts.mi.gov/Administration/SCAO/
OfficesPrograms/FOC/Pages/Pundit.aspx](http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FOC/Pages/Pundit.aspx)**



Spotlight on... NICOLE SUMMERS

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3. How has this knowledge impacted your current job?

I came into my current position with an in-depth understanding of how FOC offices function and am aware of the options available to litigants. I am able to answer questions on all FOC procedures. I understand the importance of informed litigants.

4. What advice would you give to people getting into family law as attorneys or otherwise?

My advice would be to try and learn about the various procedures and processes that your local FOC uses. Many attorneys and the general public do not understand the purpose of a conciliation conference or an investigation or even why one was ordered. Additionally, they may not understand how to answer a potential client's question or give the potential client accurate information. As an attorney, if you do not understand the process completely, it is important to contact the FOC and ask questions.

5. What are the biggest differences you have found in working at the local level versus the FOCB?

The biggest difference I have found in working at the local level versus the FOCB is the discovery of how the policies apply to real life. Real life situations are not all predictable; there is no real standard of how a case progresses. While there may be similarities, each case that comes through the FOC is unique and different from the one before or after.

6. What has been the most difficult transition?

While I worked at FOCB I learned about the formula and the factors it considers. I understand the rationale behind certain policies that underlie the creation of the child support formula. However, applying the formula to individual "real" cases is completely different. The Michigan Child Support Formula allows deviation and consent agreement. It is up to the local courts to approve these deviations. It is difficult to understand how the formula is helping the families and minor children when a proposed child support order amount under the Michigan Child Support Formula greatly differs from what the parties may have previously consented to. The real goal should be the best interests of the children and hard and fast rules do not always reflect that. I find that when parents are willing and able to agree and work with one another, they are more likely to pay their child support and follow court orders. Even though I understand the state and federal policies, and the child support formula and why they are in place, it is still difficult to apply these policies to cases involving real people.

7. What part of your job at the FOCB has been the most beneficial to you now working at the local level?

I now understand the process, the procedures, and the policies that are in place statewide. I understand the difficulties that people encounter with their cases through their local friends of the court and I am able to assist parties more effectively than I would if I did not understand the policy end of things. Working at the FOCB provided me both a worthwhile education and a past work experience that gave me the knowledge and confidence to perform well in my current position. The position opened many doors for me and I am forever thankful for the opportunity to have worked at the FOCB and with the great people there. Everything that I learned while working at the FOCB makes me a better investigator/conciliator, and perhaps someday a better, more-informed attorney.

Because the FOCB works closely with local FOCs to ensure training of staff on policies and procedures and to update FOCs on relevant statutes and federal regulations, the ongoing communication between the FOCB and local FOCs is essential in keeping the FOCs working efficiently and effectively for all litigants.

If an FOC office or a court has any questions about the content of the Pundit, please contact Elizabeth Stomski at stomskie@courts.mi.gov or at 517-373-5975.

COLLECTION OF CURRENT SUPPORT: WHAT'S WORKING FOR FRIEND OF THE COURT OFFICES IN MICHIGAN

Michigan's collection of child support is not only an important part of Title IV-D federal performance requirements for the state to receive incentives, it is also an important reflection of the Friend of the Court (FOC) office's efforts to ensure child support is paid to families relying on receiving the support. While some FOC county offices have historically been among the top collectors of current support, other counties' FOC offices have had to make more concerted efforts to improve their collections.

Most counties would agree with Andrea Monnett, Director of the Marquette County FOC: taking "a very proactive approach to child support enforcement" is the way to increase collection of current support. In Marquette County, this means that "[w]hen payments stop coming in from a payer, we try to immediately start show-cause proceedings in an effort to alert the parties to the lack of payments and to give them an opportunity to cure or explain the lack of payment." Additionally, because Marquette County is a relatively small county, case specialists are able to be more proactive with both payers and employers because they have familiarity with the families they serve.



Sandra Erskine
Tuscola County
FOC Director

Similarly, Sandra Erskine, Tuscola County FOC Director, stresses that communication with clients is key to maintaining strong collections. "We regularly contact our payers to find out why their payments are late and encourage them to contact our office if there has been a change in circumstances." But in Tuscola County, the FOC enforcement staff has "employed a 'progressive enforcement' style, which helps reserve our most punitive enforcement tools for our most culpable nonpayers." This technique emphasizes reaching out to payers and encouraging them to make "good-faith" payments before FOC staff would initiate contempt proceedings. "By communicating with our clients, we learn who doesn't have a driver's license and therefore struggles to find work; we learn who has a felony record and therefore can't get hired by a staffing agency; we learn which client has trouble reading and writing and may need help filling out a child support modification questionnaire; and in the end, we learn how to best manage each particular case based on its individual circumstances." By communicating with payers, the Tuscola County FOC is able to find the root cause of payers' delinquent support and can then make informed decisions when implementing enforcement tools.

The concept of "right-sizing" child support orders can be an invaluable tool for counties that are working to increase collection amounts. When reviewing cases, FOC staff may notice a billing rate that may be disproportionately high compared to the payer's ability to pay that amount. Mark Niemeyer, Mason County FOC Director, recognized situations where payers had abandoned their support obligations, or were paying, but "standing still" because of inability to pay in full. "By decreasing the overall current support ordered and maintaining current support collections, the [FOC] will see a percentage increase in the current collections factor, thereby generating greater revenue to apply towards 'right-sizing' orders and to enforce support, which will help increase the current collections percentage and generate more revenue." Niemeyer further explains, "[t]he payer benefits by having a current support obligation that is realistic with a greater likelihood of being perceived as 'fair' and a greater potential for regular payment and personal financial empowerment." By maintaining communication and taking a closer look at the payer's situation, FOC offices can better identify practical support amounts that will promote consistent collection of current support.

Interpretation of data is a vital tool for improved collections in most FOC offices. Erskine says that her office prioritizes both qualitative data like the staff's tone when addressing clients (reflecting office professionalism), and quantitative data, which her staff regularly reviews at monthly meetings. "[W]e review our collections statistics and strategize on ways to improve our performance. By including our entire staff in these discussions, we all feel a sense of ownership of the results and motivation to continue our hard work."

With a continued emphasis on the importance of information gained by data review, Isabella County Chief Judge Paul H. Chamberlain prioritizes monthly meetings with the Isabella County FOC office to review reports. He also stresses the importance of communication; not only between the FOC staff and parents, but throughout the entire community. An example of this "external communication" involves developing ongoing rapport with law enforcement. Judge Chamberlain stresses the importance of serving warrants on delinquent payers, and explains that failing to collect child support is bad for the entire community because, in the end, the children are the ones who are deprived.

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UNION DUES AND THE MICHIGAN CHILD SUPPORT FORMULA

BY HONORABLE NANCY THANE, TUSCOLA PROBATE COURT JUDGE



Hon. Nancy Thane
Tuscola Probate
Court Judge

Freedom to Work laws allow many workers in Michigan the flexibility to choose whether they want to join a union.¹ That legislation does not change the Michigan Child Support Formula Manual. Just as before, anyone calculating a parent's support should only deduct "mandatory payments as a condition of employment."

Before "Freedom to Work," if a parent paid union dues, in most instances, the dues were mandatory as a condition of employment and therefore the dues were deducted from the income used to calculate that parent's child support.

Now, most employees have a choice whether to maintain union membership. Given that the MCSF permits deducting "mandatory" payments and that the objective of determining net income is to establish "how much money a parent would have available for support," a parent's decision to maintain membership translates into fewer instances where a court will consider union dues as a "mandatory" deduction.

"Freedom to Work" does not mean that all union dues are discretionary. Several situations exist where union dues will likely remain "mandatory payments as a condition of employment." The following list represents employment relationships in which a parent may be mandated to pay union dues:

- Unionized public police and fire department employees
- Federal workers not covered by Freedom to Work legislation
- Parents who work in a non-right to work state
- Vocations where workers are required to be union members in order to work at certain job sites (for example, steel workers, electricians, plumbers, actors, etc.) because these vocations may have contractual restrictions to only employ union workers
- Workers in vocations normally placed through union halls (boilermakers, asbestos workers, etc.).

Dues normally represent a low percentage of an employee's overall income (e.g., 1 hour's wage biweekly or 1/80th of gross income). Thus, the higher income that results by not deducting them from the net income used to calculate support should not have a significant effect on a support order.

Just as before the laws were enacted, the person who calculates the net income used to determine a support order amount (attorney's office, friend of the court staff, etc.) must decide whether union dues that a parent pays are "mandatory" before deducting them. It should no longer be assumed that all union dues are mandatory or, on the other hand, that none of the dues is a permitted deduction. This statutory change necessitates inquiring whether any of the union dues that a parent pays is a mandatory union due. Ultimately, the court will decide on a case-by-case basis whether union dues should be deducted from a parent's net income to determine support payments.

¹Michigan's Freedom to Work legislation includes [MCL 423.1](#) (private employers) and [MCL 423.201](#) (public employers).



COLLECTION OF CURRENT SUPPORT: WHAT'S WORKING FOR FRIEND OF THE COURT OFFICES IN MICHIGAN

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Another example of “external communication” may occur with both sheriffs and jail administrators. Judge Chamberlain has noticed that oftentimes throughout the state, sheriffs may be reluctant to pursue support warrants because of jail overcrowding issues. His answer – “You will have beds available for support delinquents.” This may sound harsh to some, but as a judge who has prioritized collection of support from his first day on the bench, Judge Chamberlain delivers this message while stressing the importance to the community as a whole: Payers who are delinquent in their support payments are hurting our communities’ children and it is in all our best interests to facilitate enforcement.



Hon. Paul H. Chamberlain
Isabella County Chief Judge

“External communication” can be an extremely valuable tool used to increase collection of current support, especially in counties where judges are willing to invest their time and resources into that pursuit. But “internal communication” remains critical within every FOC office, as stressed in Tuscola County. Erskine and her staff work diligently to provide an office that parents can view as a resource and not as a burden. “With a staff of only 14, it’s essential that everyone is cross trained and has a basic understanding of all areas of operation. Although we have specialized departments within our offices, cross training enables staff to approach each case with a holistic perspective and know generally what options are available so they can properly direct clients to the right person.” By keeping everyone, from the FOC staff to parents to judges to law enforcement, in the communication loop, FOC offices can promote more comprehensive understanding of the importance of enforcement, which can increase collection of current support.

The consensus among the counties contacted for this article seems to be that maintaining or increasing collections of current support amounts comes from a multi-faceted approach. Approaches used in counties to increase collections include regular review of qualitative and quantitative data, continuous communication between all participants in support enforcement, and “right-sizing” support amounts to promote continued payments and a feeling of fairness to struggling payers. Furthermore, in addition to helping families provide for their children, there is extra incentive for FOC offices to increase their collections of current support payments because when there are increased collections FOC offices receive additional IV-D funding.



MEDIATING PARENTING-TIME DISPUTES¹



The potential advantages of mediation are well-known. Guided by a neutral mediator, parties are able to retain control over the process of dispute resolution, to bring to the table and discuss any nonlegal issues that underlie the dispute, to craft a resolution that accords with the parties’ goals, interests, values, and unique situations, and to do all this in a nonadversarial setting that can preserve relationships and lay groundwork for future cooperation. When it comes to domestic relations issues, resolving disputes in a way likely to facilitate communication and foster future cooperation has the potential to add to the long-term well-being of the children involved.

This year marks the 25th anniversary of Michigan’s Community Dispute Resolution Act. Passed in 1988, the act created the community dispute resolution program (CDRP), which continues to provide a variety of “forms and techniques of voluntary dispute resolution” as alternatives to the use of traditional judicial processes. [MCL 691.1553.] Under the CDRP, Michigan is served by 18 nonprofit community dispute resolution centers through which trained volunteers from various walks of life mediate everything from small claims to complete divorces. An Access and Visitation Grant provides funds to roughly half these centers enabling them to receive referrals from friends of the court. In keeping with the goals of the grant, dispute resolution center mediators work with parties primarily to help them resolve parenting-time disputes and thus perform a service that can augment the work of local friends of the court.

(continued on next page)

¹Information from this article was provided by Doug Van Epps, Director of the Office of Dispute Resolution, Carrie Shelton, Social Service Worker and Parenting Time Specialist at the Genesee County Friend of the Court, and Jane O’Dell, Executive Director of the Community Resolution Center in Flint, Michigan.

MEDIATING PARENTING-TIME DISPUTES

(continued from the previous page)

Carrie Shelton handles parenting-time violations in Genesee County and makes frequent use of the Flint dispute resolution center. Oftentimes, when a party files multiple parenting-time violation complaints and the parties seem unable to resolve their parenting-time issues, Ms. Shelton will ask the court to order the parties to mediation. Once issued, copies of the court's order are sent to the parties and the parties are instructed to contact the local dispute resolution center.

Jane O'Dell is the Executive Director of the Community Resource Center in Flint, one of the state's 18 dispute resolution centers. She explains that the process of referral varies; some courts will "require" mediation while some will only suggest it. Some use it for preadjudication and some for postadjudication cases. When Ms. Shelton sends copies of the Genesee County court's order to the parties, the center also receives a copy of the referral, and in the majority of cases, it is the center that makes the initial contact with the parties. The first thing the center does is conduct a thorough, premediation domestic violence screening, usually by telephone. Given a satisfactory screening, the center will then set up a time convenient for both parties to meet with a mediator. A mediation session typically lasts about two hours. Some sessions may last a little longer, and not infrequently, more than one session may be necessary for the parties to reach an agreement. An added benefit of mediation is that it allows parties to address an issue far more exhaustively than might otherwise be possible. Any initial reluctance to participate is often attributable to the parties' unfamiliarity with the process of mediation. Once it is explained, however, parties are receptive to the opportunity to bring to the table and address issues that underlie their parenting-time dispute and to reach a mutually agreeable resolution. Ms. O'Dell estimates that parties in approximately 65-75 percent of the referrals reach agreement. The process ends either when the parties reach a mutually satisfactory agreement, or when their discussions reach an impasse.

When the parties do reach an agreement, it is memorialized and Ms. Shelton asks the court to make it into an order. If the referred parties do not reach agreement, or reach only partial agreement, Ms. Shelton informs the judge that, pursuant to court order, the parties tried to mediate the issue but were unable to reach full agreement, and the judicial process would continue. Should a party file a motion concerning parenting time before attending mediation, the issue stays with the court, and if one of the parties refuses to mediate or fails to show up for mediation, the noncompliant party is taken before the court. Ms. Shelton finds that most parties are receptive to mediating their differences, and that a lot of parties actually request mediation. She finds the program especially beneficial for parties who are able to focus on their parenting-time issues and who are concerned about resolving them in the best interests of the children.

In addition to working with parties to resolve parenting-time disputes, dispute resolution mediators mediate a variety of pre- and postjudgment divorce issues. The following table provides a general breakdown of the types of cases mediated under the auspices of the Community Dispute Resolution Program.

Community Dispute Resolution Program Domestic Cases, including Access and Visitation
(October 1, 2011 – June 30, 2012):

Cases Mediated to Agreement or Partial Agreement	959	Percentage of Cases That are Postjudgment	65.3%
Cases Mediated Without Agreement	376	Percentage of Cases That are Prejudgment	34.7%
Total Cases Disposed	1,983	Resolution Rate	71.8%

For more about mediating parenting-time disputes, the Office of Dispute Resolution has a pamphlet entitled *Parenting Time Disputes* available at

[http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/](http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/ResolvingCustodyParentingTimeSupportDisputes.pdf)

[ResolvingCustodyParentingTimeSupportDisputes.pdf](http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/ResolvingCustodyParentingTimeSupportDisputes.pdf). Links to information about Community Dispute Resolution Centers, including links to individual Center websites, is available at

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/Blue%20List%20-%20Current.pdf>.

As a means of resolving domestic relations disputes, mediation is just one alternative to the judicial process. Although it is not appropriate in every case, where it is suitable, mediation has the potential to produce positive, lasting solutions to contentious issues.

THE CHILD SUPPORT PROGRAM'S NEW STRATEGIC PLAN

Michigan's five-year child support program strategic plan (2013-2017) represents a new direction. Past strategic plans were developed based on requirements to meet federal collection mandates and the plans emphasized coercive collection approaches rather than focusing on broader concerns such as a child's stability or the family's well-being. The new plan reconciles the need for financial support with these broader concerns that impact parents and children who are actively participating in the child support program. The new plan's focus emphasizes the need to better understand the program's customers and creates a more personalized approach to resolving support nonpayment in the context of the family's needs as a whole, but while retaining coercive measures when they are absolutely necessary.

Important aspects of the new strategic plan include:

- use of data, science, and technology to develop new business processes that address family needs holistically,
- analysis of caseloads and use of evidence-based techniques to determine the best approach to collect support,
- analysis of caseloads to better understand our customers to improve customer service, and
- identification of barriers that prohibit healthy family relationships and implementation of strategies to overcome those barriers.

Michigan's child support partners believe this approach will provide valuable outcomes in areas such as improving the overall well-being of families while, at the same time, producing increased collections of child support.

THE CHILD SUPPORT PROGRAM IMPACTS MILLIONS OF FAMILIES

There were over 15 million open child support cases affecting over 17 million children in the United States during fiscal year (FY) 2012.¹ Over 1 million of these open child support cases were in Michigan, which ranks 3rd in the country for open child support cases.² Assuming that there are two parents for every child support case and at least one child, the Michigan child support program impacts more than 30 percent of Michigan's 9.9 million citizens, or almost 1 out of every 3 people.³ This means that Michigan's new strategic plan can significantly help a large number of Michigan families.

BILLIONS OF DOLLARS IN UNCOLLECTED CHILD SUPPORT

Almost \$1.5 billion in child support was due in Michigan and over \$33 billion due for the entire country for FY 2012.⁴ At the same time, Michigan parents owed over \$8 billion in child support arrearages, while nationally parents owed over \$114 billion.⁵ These billions of dollars represent money that parents have not paid to provide for the needs of their children. Michigan has over 600,000 child support cases with arrearages and is collecting on about 60 percent of those cases.⁶ One of the goals of the new strategic plan is to better understand why parents fail to pay child support when it is due and how to encourage payments to be made in a way that will benefit the entire family.

For these families and for these children, receipt of child support can make a real difference. According to a 1996 study, child support lifts about half a million children out of poverty, reducing poverty among these children by 5 percent. Since 1996, the relative importance of child support and earnings has increased, while cash assistance makes up a substantially smaller part of family income for impoverished families that receive child support. Today, child support represents a slightly larger share of family income for these families than Temporary Assistance to Needy Families. It is expected that implementation of the new strategic plan will help Michigan families achieve economic stability, possibly even lifting them out of poverty, and, thus, provide better lives for these children and their families.

¹The 17 million children represent only those children involved in the federal program.

²FY2012 Preliminary Report –Table P-10, OFFICE OF CHILD SUPPORT ENFORCEMENT (Sept. 1, 2013),

<http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-10>.

³See Michigan QuickFacts, U.S. CENSUS BUREAU (June 27, 2013), <http://quickfacts.census.gov/qfd/states/26000.html> (providing 2012 Michigan population estimate).

⁴FY2012 Preliminary Report –Table P-16, OFFICE OF CHILD SUPPORT ENFORCEMENT (Sept. 1, 2013), <http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-16>.

⁵FY2012 Preliminary Report –Table P-18, OFFICE OF CHILD SUPPORT ENFORCEMENT (Sept. 1, 2013), <http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-18>.

⁶FY2012 Preliminary Report –Table P-20, OFFICE OF CHILD SUPPORT ENFORCEMENT (Sept. 1, 2013), <http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-20>.

THE CHILD SUPPORT PROGRAM'S NEW STRATEGIC PLAN*(continued from the previous page)***PRELIMINARY RESULTS OF THE NEW APPROACH**

Michigan has long advocated for an approach that promotes a parent's contact with his or her children. Parenting time most commonly occurs in cases involving divorce, which make up about 38 percent of Michigan's cases. Cases in which the parents are not married are less likely to maintain parenting time. Anecdotal evidence supports the proposition that parents who see their children regularly, are more likely to pay their child support.

A recent pilot project in Genesee County tested that proposition.⁷ The family division of Genesee County Circuit Court provided services to families at the beginning of the case to establish parenting time and to identify potential obstacles that may hinder both parenting time and payment of support. The results were promising. Seventy percent of the pilot cases paid child support compared to 58 percent of the rest of the court's cases. In program evaluation surveys, the parents continually referred to the process as one in which they felt empowered. Another relevant project that holds promise is in its final year in Kent County. The project refers nonpayers to work training and asset building programs. Preliminary reports are positive. Anecdotal evidence and the results of these pilot projects all point to the potential success that may be gained by a new approach. Additionally, by helping parents realize their potential both financially and as parents, some of the significant impairment to families that has been historically identified in fatherless homes can be avoided.

CHILD SUPPORT COLLECTION REDUCES CHILD POVERTY RATES

One-third of all United States families receiving child support in 2007 were poor, while another 30 percent lived between 100 and 200 percent of the poverty threshold.⁸ Families having children living in single-mother households had a poverty rate over 4 times the rate of children living in married-couple families in the United States in 2011.⁹ The Children's Defense Fund has estimated that in 2012, ten million impoverished children lived in single-parent families, with the majority of these children living in single-mother households.¹⁰

For these families and for these children, receipt of child support can make a real difference. According to a 1996 study, child support lifts about half a million children out of poverty, reducing poverty among these children by 5 percent.¹¹ Since 1996, the relative importance of child support and earnings has increased, while cash assistance makes up a substantially smaller part of family income for impoverished families that receive child support. Today, child support represents a slightly larger share of family income for these families than Temporary Assistance to Needy Families.¹² It is expected that implementation of the new strategic plan will help Michigan families achieve economic stability, possibly even lifting them out of poverty, and, thus, provide better lives for these children and their families.



⁷<http://www.acf.hhs.gov/programs/css/resource/1115-grants-awarded-in-fy-2009>

⁸Office of Child Support Enforcement, *Economic Stability*, CHILD SUPPORT FACT SHEET SERIES NUMBER 4, 1 (June 19, 2011), http://www.acf.hhs.gov/sites/default/files/ocse/economic_stability.pdf.

⁹Thomas Gabe, *Poverty in the United States: 2011*, CONGRESSIONAL RESEARCH SERVICE REPORT, 6-7 (Sept. 27, 2012), <http://www.fas.org/sgp/crs/misc/RL33069.pdf> (providing that the poverty rate of children in married-couple families was 10.9 percent, while the poverty rate of children in female-headed families with no spouse present was 47.6 percent).

¹⁰*Child Poverty in American 2012 National Fact Sheet*, CHILDREN'S DEFENSE FUND, 2 (Sept. 17, 2013), <http://www.childrensdefense.org/child-research-data-publications/data/child-poverty-in-america-2012.pdf> (providing that 56.1 percent of all poor children live in single-mother families).

¹¹Elaine Sorensen & Chava Zibman, *Child Support Offers Some Protection Against Poverty*, URBAN INSTITUTE (Mar. 5, 2000), <http://www.urban.org/publications/309440.html>.

¹²Elaine Sorensen, *Child Support Plays an Increasingly Important Role for Poor Custodial Families*, URBAN INSTITUTE (Dec. 2010), <http://www.urban.org/uploadedpdf/412272-child-support-plays-important-role.pdf>.

**THE LEGAL CORNER**

A summary of recent Michigan Court of Appeals decisions, Michigan IV-D memoranda, and SCAO administrative memoranda.

COURT OF APPEALS DECISIONS – SEE [HTTP://COA.COURTS.MI.GOV/RESOURCES/OPINIONS.HTM](http://coa.courts.mi.gov/resources/opinions.htm)

Carr v Carr: unpublished opinion per curiam, issued July 16, 2013 (Docket No. 315011). A court may decide if an established custodial environment exists on the statutory best-interest factors.

Lasley v Miller: unpublished opinion per curiam, issued July 18, 2013 (Docket No. 313005). In a custody case, when an appellate court remands and requires the trial court to set aside its order awarding custody to one party, the previous custody order does not automatically become reinstated. An appellate court must specifically state on the record whether the previous order is to be restored in the interim.

Thornton v Schippa: unpublished opinion per curiam, issued July 23, 2013 (Docket No. 313291). An abrupt change of schools may effectuate a “change in circumstances” in a child’s life, particularly where the change occurs without notice or consultation with the other party.

Dedaj v Dedaj: unpublished opinion per curiam, issued July 23, 2013 (Docket No. 306981). Where the trial court determines that a noncustodial parent who is required to report income to the court for purposes of determining child support knowingly misrepresents that income, the trial court is justified in awarding retroactive support to the custodial parent.

Hayley v Martin: unpublished opinion per curiam, issued July 23, 2013 (Docket No. 310504). In determining joint legal custody, a trial court must apply its factual findings to the standards for assigning legal custody; otherwise, the trial court’s record is not sufficient for appellate review of the decision.

Schneider-Penning v Adams: unpublished opinion per curiam, issued July 30, 2013 (Docket No. 307034). A trial court cannot use a three-year average to calculate petitioner’s income for the purpose of modification when a party’s immediate income has varied yet the year-to-year income amount has remained somewhat constant.

Thakker v Thakker: unpublished opinion per curiam, issued July 30, 2013 (Docket No. 312615). In a change of domicile case, the proposed revised parenting time schedule must offer a realistic opportunity for the nonrelocating parent to preserve and foster the parental relationship.

Sprenger v Bickle: issued September 10, 2013, 302 Mich App __ (2013). The majority reaffirmed that, unless a child is born out of wedlock or there has been a prior judicial determination that the child is not issue of the marriage, an alleged father does not have standing to bring a claim under the Paternity Act.

Sturgis v Sturgis: unpublished opinion per curiam, issued September 17, 2013 (Docket No. 313672). Where a party’s history of violence, unacceptable disciplinary tactics, and denial of culpability are known to the trial court and indicate a strong likelihood of continued abuse, the trial court commits reversible error by reinstating that party’s parenting time.

Grimes v Van Hook-Williams: issued September 19, 2013, 302 Mich App __ (2013). The Revocation of Paternity Act does not deny alleged fathers due process or equal protection by denying them standing when they knew or had reason to know that the mother was married at the time of conception.

Book-Gilbert v Greenleaf: issued September 26, 2013, __ Mich App __ (2013). Where a grandparent’s motion for visitation is opposed by the child’s guardian, the guardian is not entitled to and cannot use the fit parent presumption of MCL 722.27b(4)(b) to deny grandparent visitation.

Hertzberg, v Katz, unpublished opinion per curiam, issued October 8, 2013 (Docket No. 306208). When ascertaining a parent’s income for the purpose of determining child support obligations, a court confronted with two different income projections by two different expert witnesses should make findings regarding which method of calculation the court finds more reasonable instead of averaging the two figures to arrive at a projected income.

Fisher, v Justribo, unpublished opinion per curiam, issued October 15, 2013 (Docket No. 312106). Targeted limitations on a parent’s decision-making authority do not constitute a change in legal custody.

West v West, unpublished opinion per curiam, issued October 15, 2013 (Docket No. 314461). In a custody dispute between a natural parent and a third person, the third person must rebut Michigan’s parental presumption and prove by clear and convincing evidence that custody with the natural parent is not in the child’s best interest.

Wright v Wright, unpublished opinion per curiam, issued October 15, 2013 (Docket No. 314022). A trial court’s credibility determinations will not be overturned on appeal unless the court’s factual findings regarding credibility clearly preponderate in the opposite direction.



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Stankevich a/k/a Milliron v Milliron, unpublished opinion per curiam, issued October 17, 2013 (Docket No. 310710). The equitable parent doctrine applies only in the context of marriage. Since Michigan law does not recognize same-sex unions as marriages, the equitable parent doctrine cannot be extended to give standing in a custody dispute to the partner in a same-sex union who is not the biological parent of the child at issue.

Bangs v Groulx, unpublished opinion per curiam, issued October 22, 2013 (Docket No. 314566). “[T]he determination of proper cause or a change of circumstances is a mandatory ruling that must expressly be made by the trial court whenever modification of a custody order is being contemplated, regardless of whether the parties raise the issue or even agree that proper cause or a change of circumstances exists.” Failure of a trial court to so rule constitutes reversible error.

Michigan IV-D Memorandum (Office of Child Support)

2013-15: Updates to Michigan IV-D Child Support Manual Section 6.27, “Liens – FIDM/MSFIDM” and Introduction of Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM) Forms.

This IV-D Memorandum announces revisions to *Michigan IV-D Child Support Manual* Section 6.27, “Liens – FIDM/MSFIDM.” A majority of the *Michigan IV-D Child Support Manual* Section 6.27 was revised to reflect changes in lien policy.

2013-16: Introduction of Michigan IV-D Child Support Manual Section 6.30, “Liens – Insurance” and Updates to the Insurance Claims Data Match (ICDM) Forms.

This IV-D Memorandum introduces Section 6.30 “Liens – Insurance” of the *Michigan IV-D Child Support Manual* and announces form number changes and minor text changes to the forms used by OCS Central Operations in the ICDM and lien process. Within manual section 6.30, there are no changes to current ICDM policy.

2013-17: Early Notification of Unemployment Income Withholding Improvements and Pre-Release Preparation Activities.

This IV-D Memorandum announces upcoming improvements to the interface between the Michigan IV-D program and the Michigan Unemployment Insurance Agency (MUIA). The improvements will affect income withholding of unemployment benefits as well as IV-D staff workflows and responsibilities. This IV-D Memorandum identifies the impacts associated with the improvements and prepares IV-D staff for implementation of the changes.

2013-18: Unemployment Income Withholding Improvements, Withholding Fee, and Other Party (OTHP) Maintenance.

Section 6.03 has been updated to reflect improvements to the interface between the Michigan IV-D program and the Michigan Unemployment Insurance Agency (MUIA) in the September 2013 system releases. Section 6.03 has also been revised to include information from IV-D Memorandum 2013-003, *New Legislation Regarding Fee for Income Withholding*. It explains the withholding fee that sources of income are permitted to charge and collect in response to an income withholding notice (IWN). Section 3.16 discusses new and updated policy regarding maintenance of OTHP information. Existing OTHP maintenance-related policy and procedures that were in Section 6.03 have been moved to Section 3.16. However, Section 6.03 still includes policy and procedure regarding income withholding for specific entities such as the State of Michigan, the Social Security Administration, federal agencies, etc.

2013-20: Arrears Management Forms Available in the Michigan Child Support Enforcement System (MiCSES).

This IV-D Memorandum announces the availability of the arrears management forms in MiCSES and identifies changes to the forms. The forms referred to in Section 6.51 “Arrears Management,” of the *Michigan IV-D Child Support Manual* have been available in MiCSES since August 5, 2013. They may be accessed from the *Enforcement Forms Matrix* (ENFM) screen.



THE LEGAL CORNER

A summary of recent Michigan Court of Appeals decisions, Michigan IV-D memoranda, and SCAO administrative memoranda.

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Michigan IV-D Memorandum (Office of Child Support)

2013-22: Case Closure; Statute of Limitations Fix. This IV-D Memorandum outlines changes to the criteria for two case closure reason codes in the Michigan Child Support Enforcement System (MiCSES) 8.5 Release (September 9, 2013): (1) “GM” – The noncustodial parent (NCP) has made no payments in 10 years since the youngest child reached the age of majority; and (2) “WY” – Non-IV-D case.

2013-23: Online Solution for Complete and Accurate Reporting (e-OSCAR) Document Image Enhancement; Action Required by August 10, 2013. The e-OSCAR system includes a document image enhancement as of August 10, 2013. This IV-D Memorandum describes the enhancement, identifies its impact on credit reporting dispute processing, and explains how FOC e-OSCAR users must prepare to use it.

2013-27: Updates to the Birth Expenses Request. Minor changes to form OCS0076 changes have been effective in the Michigan Child Support Enforcement System (MiCSES) after 5 p.m. since September 6, 2013. The four changes highlighted are (1) the title of the form now reads *Confinement Expenses Request to Birth Expenses Request*, (2) a mailer page has been added with MDCH in the “To” field, (3) revision date changed to 9/13/13, and (4) the form may now be printed centrally.

2013-30: New Support Specialist Email Address for Partner Communications. Effective October 1, 2013, child support partners only will use a new standard email address when emailing support specialists. A team of support specialists will be assigned to this email inbox to respond to inquiries in a timely manner. Please see the Memorandum for email address information.