



## Michigan Supreme Court

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March 17, 2005

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

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2005- 04  
Administrative Abatement or Redirection of Child Support

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Michigan law provides a process for administratively abating or redirecting child support payments when a child changes residences and no longer lives with the custodial parent. The law allows the FOC to abate the support obligation or redirect the support payments to the person *legally responsible* for the child. The law also assigns child support to the state when a child enters foster care. MCL 552.605d.

This memorandum is intended to assist friend of the court offices by examining the law and the administrative implications. If a judge or FOC has questions please contact Kelly Howard at (517) 373-8671 [howardk@courts.mi.gov](mailto:howardk@courts.mi.gov); or Steve Capps at (517) 373-4835 [cappss@courts.mi.gov](mailto:cappss@courts.mi.gov).

**A. Introduction**

Michigan law creates a streamlined process to allow the Friend of the Court (FOC) to administratively redirect or abate child support under certain conditions when a child no longer resides with the child support recipient.

**B. Necessary Provisions in Support Order**

**1. Orders entered after June 1, 2003<sup>1</sup>**

To provide adequate notice to parties of these administrative processes, MCL 552.605d(1) requires support orders to contain the following provisions.<sup>2</sup>

**a. Child in Foster Care**

For all new and modified support orders, substantially the following statement:

“If a child for whom support is payable is placed into foster care, child support is assigned to the Family Independence Agency (FIA).”

**b. Redirection and Abatement**

For a friend of the court case<sup>3</sup>, substantially the following two statements:

- i. “Subject to statutory procedures, the FOC may redirect support to a person legally responsible for the actual care, support, and maintenance of a child.”
- ii. “If the child resides full-time with the payer, support for that child abates in accordance with policies established by the FOC Bureau.”

**2. Orders entered before June 1, 2003**

Support orders in an FOC case entered before June 1, 2003, are deemed to include the above provisions by operation of law.<sup>4</sup> MCL 552.605d(2).

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<sup>1</sup> Public Act 570 of 2002 amended MCL 552.605d effective June 1, 2003.

<sup>2</sup> The language has been incorporated into the State Court Administrative Office’s Uniform Child Support Order (Form [FOC 10](#)).

<sup>3</sup> Due to the “opt out” law that allows parties to forego FOC services, Michigan law now defines “friend of the court case” essentially as a domestic relations case administered by the FOC. Most administrative and enforcement provisions in the law are limited to “friend of the court cases”.

<sup>4</sup> The notice that must precede a redirection or abatement of support also serves to advise the recipient of this provision in the statute.

**C. Support Assigned to the State – Child in Foster Care**

1. Codifying a long-standing FIA policy and federal requirement, when a child for whom support is payable is under the state’s jurisdiction and is placed in state foster care, support under the order is assigned to the state. An assignment of this nature has priority over other redirections of child support in this section of the law. MCL 552.605d(3).
2. An assignment of support to the state under this section does not require notice.

**D. Abating Child Support Charges in an FOC case**

1. If the child for whom support is payable resides full-time with the payer, the FOC must abate support charges for that child after following proper notice procedures (See section G, ‘*Procedure to Abate or Redirect Support*’). The FOC should consider the child to be residing full-time with the payer when:
  - a. The payee has agreed to the change of residence in writing;<sup>5</sup> and
  - b. The change of residence is, or will be, at least one month in duration; and
  - c. The child stays overnight at the payer’s residence.
2. For the purposes of administratively abating child support charges, “residing full-time” does not include either of the following:
  - a. The payer caring for the child while the payee is at work.
  - b. A parenting time arrangement established by court order.<sup>6</sup>
3. In cases with more than one child, the support abatement for one child is determined by dividing the total obligation by the number of children in the case.

*Example:* The order establishes support as \$200 for 1 child, \$300 for 2 children, and \$400 for 3 children. One child moves in with the payer. The support obligation for one child is:  $\$400/3 = \underline{\$133.33}$ . The FOC should abate \$133.33. The remaining obligation is \$266.67.

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<sup>5</sup> If the payer is unable to get the affirmation in writing, the FOC may use discretion to determine if the payee agreed to the change of residence.

<sup>6</sup> The payer may qualify for a 50 percent parenting time abatement if ordered. The policy covered by this memo does not affect parenting time abatements.

## E. Redirecting Child Support Payments in an FOC case

1. Upon receiving a request to redirect support, the FOC may redirect support only to a person who is *legally responsible* for the actual care, support, and maintenance of a child. Examples of being “legally responsible” for the child include:
  - a. A guardian appointed by the probate court.
  - b. A person with whom the child is placed pursuant to court order.<sup>7</sup>
  - c. A third party with a power of attorney executed by the child’s parent or guardian pursuant to MCL 700.5103. (Note: The power of attorney under this statute has a six-month duration.<sup>8</sup> The Notice of Redirection must inform the parties that redirection expires automatically in six months if the power of attorney is not renewed and a copy sent to the FOC.)

### 2. Other Caretakers

When a child changes residence to live with a person whose legal responsibility for the child is not immediately apparent, that person must file an action with the court in order to receive child support. The FOC cannot administratively redirect support payments to a person without determining that the person has *legal responsibility* for the child. Examples of common caretaker arrangements include a child residing with grandparents or another relative. A court must decide whether the change in custody is in the best interests of the child and, if so, whether both parents should be responsible for child support, child care expenses, and health insurance for the child.

## F. Interstate Cases

1. For an interstate case with an active Michigan support order, the same abatement and redirection provisions apply.
2. For an interstate case in which Michigan is enforcing another state’s order, abatement and redirection must follow the law of that state.

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<sup>7</sup> If a child is placed under the supervision of the FIA by court order, and the agency subsequently places the child in an unlicensed foster care setting (i.e., with a relative who does not receive foster care maintenance payments), support for that child could be redirected to the caretaker following the procedures in this policy. The caretaker must provide the FOC proof of the FIA placement.

<sup>8</sup> A power of attorney executed by a member of the military deployed to a foreign nation may provide that the delegation does not expire until 30 days after the person is returned from active duty. [MCL 700.5103](#).

## **G. Procedure to Abate or Redirect Support**

1. Upon receiving a request to administratively abate or redirect support payments, the FOC must determine whether the circumstances fulfill the statutory requirements.
2. If the case qualifies for abatement or redirection, the FOC must provide notice of the proposed action to each party. The notice must include information on how the parties may object and include the date the proposed action will take effect.<sup>9</sup> The effective date must be at least 21 days after sending the notice to the parties.
3. If neither party objects to the proposed action within 21 days, the FOC may abate or redirect support as outlined in the notice.
4. If either party objects within 21 days, the FOC cannot abate or redirect support (see Section H, “Objection to Notice”).
5. During the objection period, the FOC should continue to process child support payments as directed in the court’s most recent order. The FOC has no independent authority to place a hold on child support payments during the objection period.

## **H. Objection to Notice**

If a party properly objects to the notice of abatement or redirection, the FOC must notify the parties of the objection,<sup>10</sup> and do one of the following:

1. Review the support order under Section 17 of the Friend of the Court Act. MCL 552.517.
2. Notify the parties that either of them may file a motion to modify support.

## **I. Review of Support Order**

Michigan law requires the FOC to review a support order if there are “reasonable grounds” to believe that the support order should be modified. Reasonable grounds include a temporary or permanent change in the physical custody that the court has not ordered. MCL 552.517(1)(b). Upon determining that there has been an unordered change in the physical custody of a child, regardless of whether an abatement or redirection of support follows, the FOC should review the order to determine if its

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<sup>9</sup> SCAO has created form [FOC 106](#) (Notice of Redirection or Abatement of Child Support) for this purpose.

<sup>10</sup> SCAO has created form [FOC 107](#) (Notice of Objection to Redirection or Abatement of Support) for this purpose.

child support provisions should be modified. However, if the change in physical custody is in dispute, the FOC is not required to conduct a review.

1. If support is *administratively abated*, a review under Section 17 could entail the FOC determining if the (new) non-custodial parent should be ordered to pay the (new) custodial parent support for the child, and to provide child care and health care coverage.
2. If support is *redirected to a third person*, a review under Section 17 could entail the FOC determining if both parents should be ordered to pay support for the child, and to provide child care and health care coverage for the child.

## **J. Legal Effect of Redirection**

1. **No Modification of Court Order**  
An administrative redirection or abatement of support can occur without a change to the court order.<sup>11</sup> If an administrative *redirection* of support is made without a new order being issued, the action of redirecting support to the third person does not make the person a party to that case. In order for a third person to become a party, someone must file the proper court papers and obtain an order conferring the rights and responsibilities of a party on the third person.<sup>12</sup> An *abatement* of support charges involves only the current parties, so a new court order is not necessary.
2. **Modification of Court Order**  
If the FOC reviews the case due to a changed custodial environment and determines that a modified order is needed, the office must file a motion with the court.<sup>13</sup>

The Michigan Child Support Formula establishes a support amount for the family (both parents) and apportions that amount between the parties based on their shares of the family's total income. The support order usually specifies only the non-custodial parent's support obligation, and

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<sup>11</sup> The language authorizing redirection/abatement should be included in all orders issued after June 1, 2003. Older court orders are considered to contain the language by operation of law; therefore, a change to the court order may not be necessary.

<sup>12</sup> Normally, a third person becomes a party by filing papers or by requesting IV-D services and having a prosecutor represent that person and obtain a new support order. Depending on the nature of the existing support case, the third person may file a new case or file a motion to intervene as a party in the existing case. Often, the intervention occurs by implication, without a formal recognition of the intervention, when the court grants relief to a third party.

<sup>13</sup> A new order should be issued, for example, to require *both* parents to be responsible for child support, clarify long-term custody changes, or to grant a third party standing to participate in the case. FOC offices may develop local policies and procedures to determine the circumstances in which a new or modified order will be sought.

assumes that the custodial parent pays his/her share directly.<sup>14</sup> A motion to require *both* parties to pay may not, therefore, be a material change in the order; rather, it seeks only to quantify both parents' support obligations in the order. However, if the court regards a motion to require both parties to pay to a third person as a *new matter*, it would not be appropriate for the FOC to bring the action because it would be advocating for the third person. In this instance, the third person would be required to file a motion with the court in order to seek child support from the second parent.

3. **Third Person Request for Support**

There are different ways in which a third person who assumes legal responsibility for a child may receive support for that child. The court may order placement and the redirection of support. Depending on the circumstances, the third party may:

- a. File an action with the court to become the child's guardian.
  - i. A guardian of a minor child may file a complaint for child support under the Family Support Act.
  - ii. A court-ordered guardianship makes the guardian legally responsible for the child, in which case the FOC may redirect child support to that person.<sup>15</sup>
- b. File an action with the court for child support. The Emancipation of Minors Act allows a guardian, a relative within the third degree,<sup>16</sup> or a child who is at least 18 years of age to file an action for support. MCL 722.3.

**K. Death of Custodial Party**

1. Upon receiving notice that the custodial party has died and the child is living with the support payer, the FOC should abate the support obligation effective the date of the custodial party's death, and follow regular procedures to close the case.<sup>17</sup>

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<sup>14</sup> For example, if the total family support amount is \$1,000 per month and the non-custodial parent is required to pay \$600 per month, the custodial parent's support obligation, implicitly, is \$400.

<sup>15</sup> Child support would likely be considered at the same time as the guardianship/custody issues.

<sup>16</sup> Relations of the third degree include mother, father, sister, brother, grandparent, great grandparent, aunt, uncle, niece or nephew.

<sup>17</sup> The FOC could continue to collect past due support owed to the State of Michigan. However, the estate of the deceased parent would be responsible for collecting any past due support owed to the decedent. MCL 552.509(1) only allows the FOC to pay support to the state or a party, not to a party's estate.

2. If the custodial party dies and the child goes to live with a person other than the support payer, the FOC may redirect the support to that person only if the person meets the requirements for being *legally responsible* for that child.<sup>18</sup>

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<sup>18</sup> There is authority for the court to substitute a third party in the case of a deceased parent. Cf *Bert v. Bert* 154 Mich App 208, 212 (1986). However, even if the third party is entitled to receive support in the original case, it remains unclear if the death of the custodial party terminates the support obligation, or whether the third party should intervene in that case in order to request support.