



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MEMORANDUM

DATE: October 7, 2010

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 2010-05
Standards for Charging Friend of the Court Investigation Expenses

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

Effective January 8, 2010, [MCL 552.505\(3\)](#) was amended to permit friend of the court offices to charge parties an amount for the expense of conducting a custody or parenting time investigation, when a party requests one, pursuant to standards issued by the State Court Administrative Office (SCAO). This memorandum establishes the standards for charging a party for the FOC's expense of conducting an investigation ordered under [MCL 552.505\(1\)\(g\)](#). Given statewide variation in the amount expended to conduct an investigation and differences in local practices, each circuit must enter a local administrative order (LAO) to establish local procedures based on [SCAO model LAO 34](#).

If court or local 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

1. When a dispute involving custody or parenting time issues exists in a domestic relations matter, the court may order the friend of the court (FOC) office to investigate the relevant facts and make a written report and recommendation to the parties and to the court. [MCL 552.505\(1\)\(g\)](#).
2. [MCL 552.505\(3\)](#) permits the FOC office to charge parties in a dispute an amount for the expense of conducting an investigation and making a report, and outlines several parameters regarding the amount that an office may charge.
 - An office may only charge for its expenses pursuant to standards prescribed by the State Court Administrative Office (SCAO).
 - An office cannot assess an amount to the parties unless a party requests an investigation.
 - The amount assessed cannot exceed the office's expense to conduct the custody or parenting time investigation and make the report and recommendation ordered under [MCL 552.505\(1\)\(g\)](#).
 - If the court waives or suspends fees in a case due to indigence or inability to pay, the office shall not charge for its investigation. If the court orders partial waiver or suspension of fees in the case due to indigence or inability to pay, the office shall reduce the amount charged.
 - If the court determines that a party's request for an investigation was frivolous, the court may order that the amount be charged only against the requesting party.
 - Monies collected for an office's expenses to conduct investigations must be deposited into the friend of the court fund.
3. Throughout the remainder of this document, the term "investigation" means the work and processes used to find information and to make a written report and recommendation to fulfill FOC duties under [MCL 552.505\(1\)\(g\)](#). The term "office" means the local friend of the court office that conducts an investigation.

B. Standards

1. Local Administrative Order Required
 - a. To establish procedures governing charges for FOC investigation expenses, each circuit must adopt a local administrative order (LAO) pursuant to MCR 8.112(B) that conforms with [SCAO model LAO 34 - Friend of the Court Investigation Expenses](#).
 - b. An office may only charge amounts for an investigation as permitted by the LAO approved by the SCAO.

2. Investigation Requested

- a. The office may only charge an amount if a party requests an investigation.

Before the office can assess charges for its expenses, any party or a party's attorney must expressly request an investigation. Because the court may order an investigation without either party requesting it, the office cannot infer a request based solely on a motion to change a custody or parenting time order or upon a contested dispute.

- b. The office must base its determination of a request for investigation on an express statement in a pleading or on the record, a signed document requesting an investigation filed with the office, or a finding by the court that a party requested an investigation.

3. Amounts Charged

- a. The court may base the amount that it authorizes an office to charge on

- 1) a standardized schedule,
- 2) the office's expenses attributable to a specific investigation, or
- 3) a standardized schedule and added expenses not covered by the schedule.¹

- b. The amount charged may not exceed the office's total expense for conducting an investigation and issuing a report.

- c. Investigation expenses include the direct and indirect costs that the office incurs.

- 1) Direct costs incorporate amounts paid by the office or billed to the office's budget, whether for employees (salary, fringe benefits, expense reimbursement), office expenses (mailing, copying, billing), or contracted services.

In addition to time spent investigating and reviewing documents, direct costs may include expenditures for administrative activities (record keeping, expense tracking, requests for information, document preparation and distribution, etc.) and making a report (preparation, writing, review, printing, and mailing).

Do not include any direct costs submitted as IV-D CRP expenses as an expense for conducting an investigation.²

- 2) Indirect costs attributed to an investigation include a share of the office's non-IV-D indirect costs.³

¹ Schedules may be expressed as a flat amount per service, a time-based rate, or other specified charge. Compensation rates may be based on actual, standardized, or averaged amounts. Any documented specific expense paid for contracted services or purchased goods or services may be charged.

² Assure that expenses for making support recommendations are either billed for IV-D reimbursement or charged to a party. Do not submit any work billed to a party for IV-D reimbursement.

³ The court may include indirect costs in a standardized charge or add them into an hourly rate. A standardized charge could be figured by multiplying the office's total indirect costs for the period (prior year or three years) by

- 3) When figuring the office's actual expenses for conducting an investigation, do not include any amounts incurred for procedural steps that follow submission of a report to the parties and court.
 - d. An office cannot charge the parties if the court waives or suspends fees in that case because of inability to pay or indigence. The office must reduce the amount charged on a case and to a party if the court waives or suspends any portion of a party's fees because of inability to pay or indigence.

If the court partially waives or suspends fees in a case, unless otherwise ordered by the court the office must reduce its charges.
 - e. The court may direct an office to charge reduced amounts based on a party's limited ability to pay.
 - f. Unless permitted by statute or court rule, the court may not charge or collect any other fee or amount for the office conducting an investigation.
4. Records Maintained
 - a. The office must maintain sufficient documentation to show that its expenses for conducting an investigation in a case exceed the amount it charged.
 - b. Because collections pursuant to MCL 552.505(3) reimburse non-IV-D activity, the office cannot utilize MiCSES to maintain its accounting records for these amounts. The court may choose to have amounts paid through its own accounting/case management system and handled by the clerk of the court, or direct that the office collect it through a separate accounting system.
 - c. The accounting records and cash handling must conform to the requirements in the Michigan Court Administration Reference Guide and the Case File Management Standards. At a minimum, records must document every amount charged, adjustment, and payment.
5. Completing Investigations

Once ordered to conduct an investigation, unless a subsequent order terminates it, the office must timely complete its work and submit a report to the court and parties, regardless of whether a party pays the amount charged.
6. Other Requirements
 - a. The office should treat bills for amounts it charges like other documents provided to a party and either directly hand a copy to the individual or send them directly to the individual's last known mailing address as defined by MCR 3.203(B).
 - b. As required by MCR 3.208(D), the office must also provide a copy of the bill to a party's attorney of record.

the non-IV-D percentage of work and dividing by the amount of non-IV-D work during that period (sum of period's total investigations, parenting time complaints, and enforcement activities in non-IV-D cases). An hourly indirect cost could be figured by dividing the indirect costs for a period by the total office's staff hours paid in that period.

C. Local Practices

1. Referrals for Investigation

- a. Because an office only conducts an investigation when ordered, the court has total control over the investigations that the office initiates. It is unlikely that a party will subsequently request an investigation and incur charges after the court orders an investigation without someone requesting it.
- b. Without some change in local practices, the office in a jurisdiction that orders investigations in nearly every case that a dispute exists will likely see few parties request investigations, and therefore rarely be able to recover any of its expenses.
- c. The court should review local practices for referring cases for investigation and consider implementing any of the following alternatives.

- 1) In cases that do not involve domestic violence or abuse, delay ordering investigations until after the parties attempt to settle the dispute through alternative dispute resolution or domestic relations mediation. If parties refuse cooperative means of resolution, the court may want to consider whether a party requests an investigation before ordering one, because the office will not recover any of its expenses without a request.
- 2) The court and the office should promote the understanding that the outcome of every investigation, a report, is simply evidence that the court considers in its evaluation of the child custody factors, and that the court is not bound to follow any recommendation that the office makes.

Parties should not rely on the office's investigation as the main means of settling a dispute, or the primary means of presenting evidence to the court.

- a) Offer parties alternative means of presenting information that the court needs to consider when making custody or parenting time determinations—evidentiary hearing, evaluation by a private contract evaluator, attorney guardian ad litem, or FOC investigation.⁴
 - b) Do not permit parties to rely on the office's investigation and report as the primary means of introducing evidence to the court. Irrespective of whether an office has submitted a report, parties should be prepared and ready to present their complete case at hearing. During the period when an office conducts its investigation, the court should expect that the parties are simultaneously conducting discovery and preparing for trial.
- d. If a party requests an investigation on the record or in a written document, the court should make a finding in the referral order indicating that an investigation was requested.

⁴ The court holding evidentiary hearings unless a party selects another alternative would encourage parties to settle disputes and permit the court to assess costs to those who pursue frivolous litigation. Limiting orders for FOC investigations mainly to cases where a party requests one would permit the office to charge for its expenses.

2. Determining Charges

a. Charge Amounts

The statute does not require that an office charge its total cost. Rather, it may charge any amount that does not exceed its actual expense of conducting an investigation and issuing a report. The court may utilize a sliding scale or have reduced rates for parties with a limited ability to pay. When determining the amount that it will authorize the office to charge, the court should consider the office's financial need and generally the litigants' ability to pay for discretionary services.

Any office expenditures (for non-IV-D activity like investigations) not recovered from parties continue to be the responsibility of the local funding unit.

The court may improve the value of the amounts charged so parties are likely to want to pay for the service.

- 1) Encourage use of simplified processes, work flow, and other means to save resources spent on investigations.
- 2) Change local practices to reduce the overall scope of investigations by limiting the matters referred for investigation to disputed issues of fact that the court cannot determine through testimony or other evidence. Referral orders supply the clearest boundaries that make issues "relevant" for investigation.
- 3) Refocus the office's efforts to concentrate on providing facts relevant to disputed issues that the court needs to make its determination, rather than having the office conduct broad, all-encompassing investigations needed to gather all the information the court needs to determine the best custodial arrangement.

b. Assessing Charges

MCL 552.505(3) says that the office "may charge the parties an amount" and that if the court determines that a request was frivolous may order the amount be charged against the requesting party.

Whether the court chooses to require one party to pay initially or both parties pay the office's charges, the court may reallocate amounts between the parties as taxable costs.

If a party who has failed to pay disputes the amount charged, the court may direct the office to amend its bill by itemizing the office's actual expenses and crediting any amounts paid on that case, and requiring the party to pay the difference.

c. Payment Due

Because the statute does not specify when to assess charges, the court should specifically direct when the office should bill for its expenses and when it should consider the amounts due. Standardized service-based amounts permit billing

before the office completes its investigation. Rate-based or expense-based amounts require waiting to bill for services.

If the court wants to secure payment before ordering an investigation, it may, on a case-by-case basis if a party requests an investigation, order someone to post an amount to cover the office's expenses. Posted amounts should not be deposited into the friend of the court account until after the office bills the party.

The court should provide direction on how it wants the office to notify the court that a party has failed to pay timely.

3. Complaints

As with any concern about office operations, any party with a complaint regarding a office's practices or procedures for charging for its investigation expenses must file a grievance pursuant to [MCL 522.526](#).