



**Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division**
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

March 12, 2014

TO: Michigan Court Forms Committee, Domestic Relations Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **March 20, 2014 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is the agenda for the March 20, 2014 meeting of the Michigan Court Forms Committee, Domestic Relations Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa in Lansing. A map and directions are provided.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. **Minor Corrections**

FOC 112, Order to Remit Prisoner Funds for Child Support: The Michigan Department of Corrections does not want this form sent to each individual institution, but instead wants it sent to a central unit. The "TO" box on the form will be updated accordingly.

2. **Do the Instruction Forms included with Various Custody and Parenting Time Forms Need to be Modified to Indicate when UCCJEA Affidavit needs to be completed?**

To comply with MCR 3.206(A)(3), it has been suggested that instruction forms need to

be modified to indicate when a Uniform Child Custody Jurisdiction Enforcement Act Affidavit (MC 416) form needs to be filed. MCR 3.206(A)(3) provides that: “In a case in which the custody of a minor is to be determined, the complaint or an affidavit attached to the complaint also must state the information required by MCL 722.1209.” MCL 722.1209 requires certain information to be provided in a sworn statement attached to the first pleading in a case involving a “child-custody proceeding.” MCL 722.1209(1). For purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act, “child-custody proceeding” includes a proceeding “in which legal custody, physical custody, or parenting time with respect to a child is an issue.” MCL 722.1102(d). Should any instruction packets for forms be modified to reference this requirement?

In considering whether or not to modify the instructions, please consider whether SCAO should continue to maintain instructions pertaining to these forms once Michigan Legal Help has completed instructions and articles pertaining to the forms. Consider whether the work in conjunction with Michigan Legal Help meets the statutory requirement in MCL 552.519(3)(k) that the friend of the court bureau “develop . . . [i]nstructions on preparing and filing the forms, instructions on service of process, and instructions on scheduling a support, custody, or parenting time modification hearing.”

3. **FOC 1a, Friend of the Court Grievance**

There were two suggestions made regarding this form:

- (A) It has been suggested that the reference to a Citizen Advisory Committee (CAC) as a option on the form should be removed. CAC’s are formed by and report to the county board. While MCL 552.526(3) allows a party to file a grievance with the CAC, nothing requires that it be done on the same form as a grievance filed with the office. Following a legislative change that removed the requirement that each county have a CAC, the number of active committees has dropped to two.
- (B) It has been suggested by a local court administrator and friend of the court that the language on this form indicating that the grievance is about “a decision based on gender rather than the best interests of the child” be removed from the form. MCL 552.526(1) permits grievances filed with the office or chief judge about issues with either office operations or employees. The language regarding gender would be something a citizen advisory committee (CAC) looks for when it reviews grievances, but only two counties maintain CACs. The “best interests of the child” is not an accurate standard because not all complaints involve custody and parenting time investigations, which is where the best interests of the child is the standard. Therefore, it has been suggested this language regarding an objection based on an improper gender determination be removed from FOC 1a.

4. **FOC 10/FOC 10a/FOC 52 (Uniform Child Support Order)**

A number of suggestions have been received regarding modification of these forms:

- (A) A friend of the court employee has suggested that the language in the deviation

- paragraph (item 14 on FOC 10 and item 10 on FOC 10a) be modified from: “If there is a deviation, state the amount and...” to “If there is a deviation, state the amount calculated pursuant to the child support formula and...” When deviating, MCL 552.605(2) requires (a) The child support amount determined by application of the child support formula, (b) How the child support order deviates from the child support formula, (c) The value of property or other support awarded instead of the payment of child support, if applicable, and (d) The reasons why application of the child support formula would be unjust or inappropriate in the case. The issue with the current language is that individuals representing themselves seem to have trouble understanding the “amount” being asked for. Should the form be modified?
- (B) Do these forms meet the statutory requirements of MCL 552.605(2)? Specifically, is it clear on the form that if there is a child support formula deviation ordered by the court, the court must articulate “the reasons why the application of the child support formula would be unjust or inappropriate in the case.”
- (C) A local friend of the court office has suggested this form be modified to clarify the provision relating to past-due arrears being preserved (item 13 on FOC 10, item 9 on FOC 10a). Specifically, it has been noted this becomes an issue in support cases where an order is entered, but is voided by the later entry of a judgment of divorce or separate maintenance, as provided for by MCL 552.455. It has been suggested that the paragraph indicating that prior support arrears are preserved be clarified to indicate that it only refers to support orders in the same case.
- (D) It has been suggested by the Friend of the Court Bureau that language should be added to both forms pertaining to support ending by a date certain. The question that has been raised is whether the current language about when an obligation ends, that is on conditions rather than a date, meets the statutory requirement that the support orders issued post-majority of the child contain a “provision that the support terminates on the last day of a specified month, regardless of the actual graduation date.” MCL 552.605b(3). Additionally, because the court is not required to order post-majority support, should the uniform support order include an option to end support when the child reaches the age of majority? The Friend of the Court Bureau has suggested two alternatives for how this could appear on the form. The proposals and comments from the Friend of the Court Bureau are included in the materials packet.
- (E) A question has been raised regarding the items on the uniform support orders relating to health care coverage and expenses (item 4 and 5 on FOC 10; item 3 and 4 on FOC 10a). Specifically, the question is when do the provisions take effect? Originally, MiCSES interpreted it as the date the judge signed the order. However, in later design meetings it was suggested that the support effective date would apply to item 4 as well because item 3 contains a “support effective date” section and the statutory definition of support includes “payment of the expenses of medical, dental, and other health care.” See MCL 552.602(ee). It has been noted that, frequently, monetary support in item 3 on the FOC 10 is set retroactively to the date a notice was provided to the parties, as is allowed under MCL 552.603(2). However, a friend of the court office cannot take automated enforcement actions to enforce coverage before a judge signs an order. Where there is a delay in entering an order and the court directed a

parent to get insurance coverage, a court could potentially hold a parent responsible for uninsured expenses caused by the parent's failure to obtain coverage back to the "support effective date." Additionally, where a court orders an annual ordinary amount and the payer begins to make installment payments, does this provision apply to expenses effective to the date the judge signed the order or a different date if provided as a "support effective date?"

Should the language in the uniform support order be clarified to indicate the effective date of the insurance coverage provision and uninsured health care expenses provision?

5. **FOC 39e, Child-Care Verification**

It has been suggested by a local friend of the court employee that modifications should be made to this form so that it is completed properly. Specifically, it has been suggested the portion of this form relating to contributions from a federal or state agency, under both the parent and provider sections, be bolded and amended. The amendment suggested is that the form should also ask whether payment has been made by some other third-party source. This came up in a case where an individual was having \$400 a month of child care paid directly to a provider by an employer. Given that the Michigan Uniform Child Support Formula considers in the calculation both public and private payments for child care, should this language be modified? See MCL 552.519(3)(a)(vi) (noting that the child support formula shall consider child care costs of each parent); see also Michigan Child Support Formula Manual, 3.06(B) (the actual cost of child care is to be determined by deducting any child care subsidies or similar public or private reimbursements from the cost used in the formula).

6. **FOC 65, Motion Regarding Parenting Time**

It has been suggested that the form and/or instructions may not be clear enough regarding the fact that if an unrepresented individual believes the requested change in parenting time would also warrant a change in support, a separate motion regarding support should be filed in conjunction with this form. The issue is that some individuals realize this after this form has been filed and are required to pay another motion fee because the two motions were not filed together and treated as one motion for purposes of the fee. Should the instructions be clarified in any way to address this issue?

7. **FOC 71, Notice of Child Support Review**

A number of suggestions have been received regarding modification of these forms:

(A) It has been suggested that item 5 on the form needs to be updated. The form currently indicates the FOC office will make available supporting documents used to make the recommendation. However, MCL 552.507a(1) only requires documents *or* a summary of supporting documents. Additionally, the Office of Child Support claims releasing tax documents violates IV-D confidentiality. Despite the statute still allowing copies of said documents to be provided, it has been suggested the language

state “a summary of supporting documents” instead. Alternatively, it has been suggested the form could track the statutory language more closely and between supporting documents and the comma, insert, “or a summary of supporting documents.” Should item 5 of the form be changed?

- (B) The reference on this form will also be corrected. Item 3.c. currently references a 30-day period for objecting. MCL 552.517(7) provides that the objection must be made within 21 days of the order determining there should be no review. The reference to the 30-day period has been on the form since its inception, but PA 207 of 2004 modified the applicable time frame from 30 days to 21 days.
- (C) It has been suggested by staff from the Friend of the Court Bureau that the work group should consider what changes should be made to the form in light of a number of possible inconsistencies between the form and MCL 552.517 and MCL 552.517b.

With respect to item 1 on the form, indicating that the review was being denied because the last request was within 36 months, only recognizes requests made under MCL 552.517(1)(b). MCL 552.517b(9) requires more frequent reviews of the support order “upon presentation by a party of evidence of a substantial change in circumstances as set forth in the child support formula guidelines.” It has been suggested the form should be modified to also indicate that this provision was not met when denying the request.

Further, it has been noted that there are other circumstances where the friend of the court office may not be required or should not initiate a review. These circumstances include: (1) where a party requests a review in a closed case (i.e. opted out of friend of the court services) or in which a party has not requested IV-D services; (2) where the final judgment or order has not been entered (in a Michigan case); (3) where Michigan does not retain jurisdiction to modify (Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A. § 1738B, where no party or child remains in issuing state, or Uniform Interstate Family Support Act, MCL 552.1101 *et seq.* continuing enforcement jurisdiction is lost because another state registered and modified our order; (4) orders in which support is “reserved” or “held in abeyance” unless the order indicates that the friend of the court must conduct a review under a certain condition (i.e. once employed). Should the form be modified to include other reasons that a request for review was denied?

- (D) With respect to item 3, when the form is sent for use to indicate a recommended change, pursuant to MCL 552.517(6)-(7), the notice serves as a petition and is filed with the court. The friend of the court office only schedules a hearing if a party timely objects. However, MCL 552.517b(3) and (6)(a) also contain requirements for notices recommending a change in support. Currently, FOC 10 includes language to cover the situation when the form is used a recommendation following a review, and indicates:

This order is entered after hearing. after statutory review. on

stipulation/consent of the parties.

The friend of the court recommends support be ordered as follows.

If you disagree with this recommendation, you must file a written objection with _____ on or before 21 days from the date this order is mailed. If you do not object, this proposed order will be presented to the court for entry.

Attached are the calculations pursuant to MCL 552.505(1)(h) and MCL 552.517b.

It has been suggested that this form, FOC 71, should be modified in item 3.a. and 3.b. to follow use as a petition that is filed with the court and allow for entry if no objection is received, as well as changed regarding when the court will hold a hearing. What changes should be made to FOC 71 to allow it to be used as the petition?

8. **FOC 89, Order Regarding Custody and Parenting Time**

There are two issues regarding this form:

(A) A local friend of the court has suggested that this form be modified to include signature lines for plaintiff and defendant. The form order and packet instructions allow the parties to consent/stipulate to entry of the order. On page 5 of FOC 10/10a/FOC 89 packet, item 3 of the instructions indicates that both parties may sign the order, but there is no place on the FOC 89 to sign, instead only on the FOC 10. Should lines for consenting/stipulating to the order be added to the FOC 89? Generally, a party's stipulation is limited to the specific order the stipulation appears on. See *Thompson v Thompson*, 261 Mich App 353, 357; 683 NW2d 250 (2004); see also MCR 2.119(D)(2) (requiring the signature of the party "at the end of the proposed order.").

(B) An inquiry was made regarding the use of this form, specifically with respect to certificates of mailing. It was noted that there was a certificate of mailing at the end of FOC 10, but not on FOC 89. The instructions, on page 4, indicate, "Then fill out the Certificate of Mailing on the front of the remaining three copies. Keep one for your own records." On page 6 it says, "On the date you serve a copy on the other party, write the date and sign your name on the remaining three copies. Return to the county clerk with two copies." Should FOC 89 be modified to also include a certificate of mailing at the bottom? Should the instructions be modified in some way to clarify the process?

With respect to both issues, bear in mind that if an FOC 89 is used, an FOC 10 should also be used and they are, in essence, one order. Is this clear enough from the way the form is set up? Do the instructions need to clarify this or does the form need to be redesigned?

9. **FOC 94, Order Correcting Omission in Order**

It has been suggested that this form be modified to include, as an option, the addition of language regarding the Hague Convention, similar to the language that appears in item 15 of FOC 89, which says: “Except as provided in item 16, neither parent shall exercise parenting time in a foreign country/nation that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.” Item 16 on FOC 89 allows for an exception to this provision, based on a written agreement of the parties. It was suggested it would be useful to have this on this form where a court is correcting an omission in an order, it could also correct a parenting time order that did not include such language, as required by MCL 722.27a(9). Should the form be modified to include such language?

10. **FOC 100, Domestic Relations Judgment Information**

Two suggestions have been received relating to this form:

(A) It has been suggested by the staff from the Friend of the Court Bureau that the checkbox at the top of the form and the instructions following it be modified. It has been suggested the wording is confusing, in that the statement before the checkbox, which says, “[e]xcept as otherwise indicated below, all information previously provided is unchanged” makes it seem like you would check it if the statement is true. However, the parenthetical statement indicates the opposite, that is that the box should be checked when information is being modified. It has been suggested that either consider changing the use of the checkbox or move the box and parenthetical statement to another line.

(B) It has been suggested by the staff from the Friend of the Court Bureau that because MCR 3.211(F) requires the use of this form where it involves “first temporary order awarding child custody, parenting time, or support and the party submitting any final proposed judgment awarding child custody, parenting time, or support” and requires the judge, before signing the judgment or order awarding child support or spousal support, to determine that this form has been submitted to the friend of the court. Should something be added to custody, parenting time, and support form orders indicating to the court that a party has complied with this rule? Should instructions for custody, parenting time, and support order forms be added to indicate that this form is required?

11. **Should a New Form be Created for Use in Consolidating Cases Under MCR 3.204?**

At the 2013 meeting of the domestic relations forms work group, it was determined that a form should be considered for development that would consolidate cases pursuant to MCR 3.204. SCAO staff indicated a draft would be prepared for consideration at the 2014 meeting. A draft form is intended to be provided either before or at the meeting.

Additionally, should a consolidation form, if created, include a method by which the court can indicate whether the arrears from a previous case are preserved in the prior case

or if they are to be incorporated into the new case. For example, where the case initially was a support order, but a judgment of divorce is later entered, MCL 552.455 provides the previous support order is null and void effective as of the date of judgment. However, support arrears are not extinguished by the judgment. See *Seybold v Seybold*, 99 Mich App 94, 96-97; 298 NW2d 4 (1980).

12. **Michigan Legal Help Questions Regarding Divorce Interviews and Possible New Forms Relating to the Revocation of Paternity Act**

In the existing interview for a pro se divorce on Michigan Legal Help (MLH), it allows either party to ask the court to exclude a child from the marriage, such as by way of a *Serafin* hearing, see *Serafin v Serafin*, 401 Mich 629; 258 NW2d 461 (1977); see also *Bergan v Bergan*, 226 Mich App 183, 185; 226 Mich App 183 (1997). During the interview process there are several screening questions about excluding a child from the marriage and the judgment of divorce that is ultimately generated allows for the possibility of excluding the child from the marriage if the husband is not the biological father. However, the new Revocation of Paternity Act (RPA), PA 159 of 2012, 722.1431 *et seq.*, may affect the process and require modification to the interview process. The RPA took effect June 12, 2012, but preserved common law actions (such as a *Serafin* hearing) for two years after the effective date of the act. MCL 722.1443(10). Such actions will no longer be available after June 12, 2014, pursuant to MCL 722.1443(10).

MLH has proposed removing the exclusion paragraph from their judgment of divorce and to advise individuals that want to raise paternity issues that they may want to seek counsel because MLH can't help them do this, which is similar to how the interview process already treats spousal support. The committee is asked to consider whether this is how it recommends MLH proceed and when MLH should make the changes effective to their interview process.

If the exclusion issue is removed from the standard divorce interview, it is possible that MLH could create a separate interview solely to help people draft motions and orders under the RPA. Related to this issue is the question of whether forms will be created for use under the RPA. Should any new forms be developed for use under the RPA?

Attachments