



# Frequently Asked Questions

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

**FAQ 2007-01**

**January 26, 2007**

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## **Using Cash Bonds to Secure Future Child Support**

This FAQ answers common questions and clarifies policy related to using cash bonds to secure future child support payments and the Lien and Bond Guideline. If court or friend of the court staff have any questions or would like additional information or clarification, please contact Bill Bartels at [BartelsB@courts.mi.gov](mailto:BartelsB@courts.mi.gov) or Angel Sorrells at [SorrellsA@courts.mi.gov](mailto:SorrellsA@courts.mi.gov), or (517)373-5975.

**#1 Q: Is there a SCAO guideline on how to secure a cash bond for future child support?**

**A:** Yes. The [Michigan Bond and Lien Guideline](#) can be found on SCAO's website. The lien portion of the Michigan Bond and Lien Guideline was superseded by [Administrative Memo 2000-11](#).

**#2 Q: What is the statutory authority to use a bond to secure future child support payments?**

**A:** Upon petition by the county FOC or the support recipient, the Support and Parenting Time Enforcement Act provides that a court, after notice to the payer and an opportunity for a hearing, may require a payer to provide a sufficient bond, security, or other guarantee to secure payment of past-due support, support due in the future, or both. See [MCL 552.645](#).

**#3 Q: What factors should the FOC consider when determining whether to request a bond to secure future support payments?**

**A:** An FOC should consider securing a bond for future support if the FOC becomes aware of a resource from which a bond can be posted, and one of the following conditions is met:

- The support payer's past performance shows that the payer cannot be relied upon to keep support payments current. A payer is considered unreliable if the payment history indicates an arrearage of \$1,000 or an amount equal to six months of the court-ordered support, whichever is less.
- The payer's past performance shows that the payer cannot be relied upon to keep support payments current and the payer has threatened to leave Michigan or threatened to sell assets to avoid future support.

- The payer changes employment or becomes unemployed and receives or is entitled to receive a severance package from an employer.

**#4 Q: How does the FOC obtain a bond to secure future support payments?**

**A:** SCAO recommends that FOCs use the following procedures to obtain a court order requiring the payer to post a bond to secure future support payments:

- Prepare a motion to require a bond for future support using form [FOC 40](#). In the motion, the FOC should include a request for a specific bond amount. Where the payer has sufficient assets to satisfy the child support order, we recommend specifying an amount equal to the number of months left in the support order multiplied by the current support obligation for those months.

However, this calculation may be inequitable or inappropriate in some circumstances. If so, the bond amount determination should be made by the court after it hears all of the evidence in the case, including, but not limited to, the payer’s payment history, available assets, circumstances surrounding the arrearages, number of years left on the child support order, etc.

- Schedule a hearing date and serve both the Motion for Bond and the Notice of Hearing on the parties by ordinary mail at their last known addresses. [MCR 3.203](#) outlines the service of process requirements and defines “last known address.” File the original motion with the circuit court.
- When the court orders a payer to post a bond, prepare the Order for Bond to Secure Future Support using form [FOC 41](#). Note: The order must specify all the conditions that the payer must satisfy to avoid forfeiting the bond.

The court may order the payer to post the bond for future support in a restricted account from which only the friend of the court may withdraw funds. At the court’s discretion, the payer may post the bond with the clerk of the court under the authority of [MCL 50.101](#); [MCL 600.572](#); [MCR 8.106](#). According to [Administrative Memorandum 2003-04](#): Bank Accounts for Processing Payments, the FOC itself should not hold the bond.

**#5 Q: What should the FOC do after a missed payment?**

**A:** When a payer misses a payment and the payer cannot be located, fails to respond, or indicates an inability or unwillingness to make the payment, the FOC should seek forfeiture of the bond because the payer failed to satisfy the conditions of the bond. To obtain the bond money by forfeiture, the FOC must file a motion to release the bond. [Form [FOC 43](#)] For purposes of forfeiture, support is considered late on the first day of the month following the month the support payment was due (e.g., child support due and not paid in November is considered late on the first day of December). [[MCL 552.605c](#)]

If the court orders the forfeiture of the bond, prepare the Order Releasing or Forfeiting Bond to Secure Future Support. Then file the original order [[FOC 44](#)] with the court and send copies to the parties by ordinary mail at their last known address in accordance with [MCR 3.203](#). If the bond was secured through the clerk’s office, [MCL 600.575](#) states that

the money, when deposited in a bank to the credit of any officer of the court, is not to be paid out by the bank until the bank receives an order signed by a circuit court judge.

**#6 Q: What should the FOC do if the payer complies fully with the child support order?**

**A:** The FOC should file a motion to release the bond to the payer because the reasons for requiring the bond no longer exist. [Form [FOC 43](#)]

If the court orders the release of the bond, prepare the order using form [FOC 44](#), Order Releasing or Forfeiting Bond to Secure Future Support. File the original order with the court and send copies to the parties by ordinary mail at their last known addresses in accordance with [MCR 3.203](#).

**#7 Q: Is income withholding a suitable method for funding a cash bond?**

**A:** Due to certain federal requirements, income withholding is typically not the best means to secure future support payments. If income withholding is used to obtain the money for the bond to secure future support payments, that money must pass through the Michigan State Distribution Unit (MiSDU). The MiSDU is required to allocate the withheld money across all of the payer’s cases. If there is cash remaining after all support owed in all cases has been paid, only one month’s worth of child support can be held by the MiSDU. All other cash will be returned to the payer. [[MCL 552.605c](#)] These issues can be eliminated by requiring the payer to post the bond in a restricted account dedicated to one case.

**#8 Q: How should the FOC process a forfeited bond?**

**A:** Once the bond has been forfeited, the friend of the court should receipt it as a “special instruction payment” to assure that the money goes to the specific case that gave rise to the cash bond. This restriction will ensure that the cash bond is not spread among all of the payer’s active support cases.

**#9 Q: Is the bond considered future support while it is held?**

**A:** No. The bond merely serves to guarantee future payments until the court either releases the bond or orders it forfeited and applied to the specific case.

**WHEN PAYERS RECEIVE EMPLOYEE BUYOUT PAYMENTS**

**#10 Q: How should the FOC proceed in a case in which the payer receives an employee buyout?**

**A:** SCAO recommends the following:

- Even if the payer has made all previous support payments on time, the FOC should consider requesting a bond if the FOC suspects that the payer intends to stop making or will be unable to make support payments in the future.
- If the payer already is in arrears but has been complying with a payment plan or court order to make periodic payments, then the FOC should actively monitor the payer’s case. If the payer has arrearages, this may be an indicator that a bond for future support

should be considered. If the payer fails to continue making timely payments, then the FOC should definitely consider asking the court to require a bond for future support.

- If the payer has arrearages that are being collected by income withholding but without a special court order to do so (e.g., the arrearage payments are made pursuant to the arrearage repayment guideline), then the FOC should consider using lump-sum income withholding to pay off the remaining arrearages from the payer’s buyout or severance package. The FOC should also consider seeking a bond to secure future support payments.
- If the payer remains in arrears even after the attempt to pay off arrearages using income withholding, then the FOC should seek a court order for a payment plan to deal with the arrearages. However, a show cause hearing may be more appropriate if the FOC knows that the payer has assets from which to pay the arrearages.

**#11 Q: Why won’t existing “bonus” income withholding language apply to buyouts?**

**A:** An employee severance package or buyout is income and not a bonus.