



Frequently Asked Questions

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

FAQ 2012-01

February 16, 2012

Custody & Parenting Time Enforcement Following a Good Cause Determination

This FAQ answers common questions and clarifies policy related to SCAO Administrative Memorandum 2002-11, *Guidelines for Enforcement of Custody and Parenting Time Violations*, and SCAO Administrative Memorandum 2001-09, *Friend of the Court Support Case Administrative Closure Criteria*. Information provided in this FAQ is related to providing enforcement services after the Department of Human Services (DHS) has determined that a party has good cause not to cooperate with the IV-D program, and that the IV-D agency will end all child support action (a good cause-end action determination).¹

If court staff have questions, or would like additional clarification, please contact Daniel Bauer at bauerd@courts.mi.gov or 517-373-5975.

#1 Q: Does a DHS determination that a parent² has good cause for not cooperating in child support change the court order for support, custody, or parenting time?

A: No. A DHS staff decision does not change an existing court order, nor does it affect the court's jurisdiction over the parent. Existing orders in friend of the court (FOC) cases remain in effect and enforceable until further order of the court.

Good cause exists when DHS staff determines a parent's cooperation with establishment or enforcement of child support would not be in the child's best interest or would likely result in physical or emotional harm to a parent or child. DHS staff's good cause determination only controls whether IV-D actions can proceed.

#2 Q: If the IV-D case closes because DHS determines good cause exists after a support, custody, or parenting time order has been entered, what services must the FOC provide?

A: Pursuant to MCL 552.503(6), in domestic relations cases in which the parties have not opted out, the office only has to provide services required by federal law, unless a party requests IV-D services. The office can choose to provide services if a party has not requested IV-D

¹ The DHS manual encourages staff to make a determination that good cause for the parent not to cooperate with the IV-D program exists, but the IV-D case may remain open. When the IV-D case remains open, the problems identified in this FAQ do not arise. DHS redetermines every good cause determination at every redetermination if subject to change.

² Here, the word "parent" includes a third-party custodian.

services, but providing them is not required.³ Since IV-D services would be available but for the good cause determination, the FOC may stop providing support enforcement services required by the Support and Parenting Time Enforcement Act (SPTEA) and the FOC Act. An office should treat closed IV-D cases in the same manner as cases lacking a request for IV-D services.

The office can administratively close the FOC case during periods of inactivity.⁴ However, because administrative closure is different from statutory closure of a friend of the court case (opt out), the office must maintain its records (e.g., reported information changes, addresses for service, updated support order information, etc.), should the need to reopen it arise during the retention period.

#3 Q: Must FOC staff reopen an FOC case administratively closed following DHS’s good cause determination if the FOC office receives a custody or parenting time complaint?

A: Yes, in order to process the complaint and meet its recordkeeping responsibilities, the office must reopen the FOC case to provide custody or parenting time services under the FOC Act or the SPTEA. After the office resolves the complaint or determines no further action can be taken, the office may administratively close its case again.

#4 Q: In cases closed following a DHS good cause determination, should the FOC require a parent to request IV-D services before providing custody and parenting time services?

It would be inappropriate to *require* a IV-D service application in this situation because a good cause-end action determination means that IV-D services will not be provided to that family pursuant to IV-D Child Support Manual⁵. Since IV-D services will not be provided, there is no practical purpose to require such an application to provide *custody and parenting time services*, though MCR 552.503 implies otherwise.

Nevertheless, if a parent *completes* a IV-D application, the FOC office will accept and forward it to OCS for processing. OCS will respond to the application, explaining why IV-D services will not be provided.

#5 Q: What should an FOC consider before providing custody and parenting time services under the FOC Act or the SPTEA following a DHS good cause determination?

FOC staff should consider the functionality within the Michigan Child Support Enforcement System (MiCSES) that may prevent any action after a good cause-end action determination. This limited functionality will require that the FOC manually generate forms. Additionally, the office may not bill time to IV-D.

³ Although MCL 552.503(6) requires “the friend of the court . . . to perform activities [only] when a party in that case *has requested* title IV-D services,” [emphasis added] there is no requirement that the party be determined eligible for the services.

⁴ “‘Closure’ means putting the case in a status in which it does not count for statistical accounting purposes and does not require support enforcement and modification activity.” SCAO Administrative Memorandum 2001-09.

⁵ The IV-D program may deny IV-D services to the applicant if the IV-D program determines that opening a IV-D case is not in the best interests of the child. (See OCS policy in IV-D Child Support Manual Section 2.05, specifically subsections 3.2.5 and 3.3.2.D., for direction to IV-D staff on this point.)

MCL 552.511(b) requires the FOC to initiate enforcement if the office receives a written complaint that states specific facts constituting a custody or parenting time order violation.⁶ The FOC must select one of the five remedies required by MCL 552.641, keeping in mind the participants' safety. Two options permitting judicial consideration are appropriate in cases involving domestic violence: commencing civil contempt proceedings or filing a motion to modify the order.⁷

In preparation for a hearing, FOC staff may contact DHS staff making the good cause determination to obtain information about the basis for the good cause determination. The court may want this information when reviewing the custody and parenting time order.

If the facts support it, the FOC may recommend the court order neutral drop-off sites; supervised parenting time, with third party monitoring and the parents paying the costs of the parenting time directly to the entity providing the supervision; or no parenting time. Such an order could be enforced in the future directly by the court without FOC involvement, at the court's discretion. Either party may object and present arguments against the recommendation to the court. In the order, the court should provide specific instruction to the FOC on how to enforce the ongoing order.

⁶ Both parties have a constitutional right to due process, including notice and opportunity to be heard; the FOC cannot abridge this right for notice of the hearing for either party, even if regulations prohibit IV-D agency parental contact.

⁷ FOC staff should be familiar with Administrative Memorandum 2002-11, Guidelines for Enforcement of Custody and Parenting Time Violations, when a dispute occurs on cases with a history of domestic violence.