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STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING



MICHIGAN IV-D ACTION TRANSMITTAL 2006-028

TO: Office of Child Support (OCS) Staff

FROM: Marilyn F. Stephen, Director
Office of Child Support

DATE: December 15, 2006

SUBJECT: Legal Pleadings, Orders and Discovery Requests

PURPOSE:

This Action Transmittal (AT) describes how OCS staff will handle legal pleadings, orders and discovery requests (including subpoenas and Freedom of Information Act [FOIA] requests), received on OCS's behalf. OCS staff must disseminate legal documents to the proper department or person in a timely manner. Any delay in reaching the correct department or person may result in default judgments and/or court sanctions.

BACKGROUND:

OCS staff are often served with legal documents including but not limited to summons and complaints, motions, orders, notices of deposition, subpoenas, petitions for review of administrative hearings and FOIA requests. These legal documents are time-sensitive and require a response. Failure to respond may result in the court entering default judgments and sanctions.

PROGRAM ACTIONS AND POLICY INFORMATION:

I. Process for Handling Legal Documents (Excluding FOIA Requests)

- A. When any unit of OCS receives a legal document, the OCS staff member must:
1. Date-stamp the document;
 2. Record the case number, parties' names and name of the document;¹
 3. Record the date the document was received or served; and

¹ The office receiving legal documents may have to create a logbook for receipt of legal documents if the office does not have a current logging process. If there is a current logging process, staff can log legal documents using the process as long as all information required by this AT is included.

4. Record the manner in which it was served (United States [U.S.] mail or in person):
 - a. If delivered in person, the OCS staff member will record who delivered the item (process server, Department of Human Services [DHS] employee, customer, etc.); or
 - b. If delivered by U.S. mail, the OCS staff member will attach the envelope to the document.
 5. **Send the document immediately to the OCS director's office.** OCS staff may fax a copy of the document to the OCS director for immediate review, and then forward the original copy to the OCS director's office through interoffice mail or another courier (depending on urgency). The OCS staff member does not need to take any further actions until directed to do so by the OCS Litigation Liaison; and
 6. **Send complaints against DHS-OCS, orders to show cause against DHS-OCS, or motions or orders for contempt against DHS-OCS to DHS Legal Affairs and Financial Integrity (Legal Affairs) immediately.** OCS staff may contact Legal Affairs to determine how best to get the document to Legal Affairs (e.g., fax, interoffice mail, personal delivery). OCS staff sending documents to Legal Affairs must inform the OCS Litigation Liaison:
 - a. That the documents were already provided to Legal Affairs;
 - b. The date and time the documents were delivered to Legal Affairs; and
 - c. The name of the person in Legal Affairs who accepted the documents, if hand-delivered.
- B. The OCS director will appoint an OCS Litigation Liaison. The OCS Litigation Liaison will maintain and control a Legal Document Logbook. The OCS Litigation Liaison will record the:
1. Docket caption and docket number;
 2. Court in which the matter is filed;
 3. Name of the responding individual or unit identified in the legal document;
 4. Date OCS or DHS staff received the original document;
 5. Date and time the OCS director's office received the document;
 6. Date and time OCS staff sent the document to Legal Affairs;
 7. Name and role of the person in Legal Affairs who accepted the document from OCS;
 8. Date and time of the next hearing; and
 9. Type of legal document and the requested information or remedy sought.
- C. The OCS Litigation Liaison will make a copy of all documents for the OCS director's review and send the originals to Legal Affairs if appropriate, or file the documents if OCS staff action is not necessary.

- D. The OCS Litigation Liaison will review the pleadings for the Notice of Hearing and tab the Notice so the reviewer can easily locate it in the file.
- E. The OCS Litigation Liaison will notify the appropriate Friend of the Court (FOC) office if the pleading includes a *Motion* to abate arrears. This motion may arrive under a variety of names, for example: *Motion for Abatement of Arrears*, *Motion to Waive Child Support Arrears*, *Motion to Forgive Past Due Child Support*. The motion will be asking the court to forgive past due child support so that the non-custodial parent (NCP) does not have to pay the overdue child support. The OCS Litigation Liaison will fax copies of the motion to the FOC staff, if the FOC office did not receive a copy.
- F. The OCS director or the OCS director's designee may review pleadings received by OCS staff.
- G. OCS staff must forward any case information requested by the OCS director or his/her designee by the deadline established by the OCS director.

Note: FOIA requests follow a separate procedure mandated by statute and DHS policy (described in Section III of this AT).

II. Legal Documents and Response Time Frames

OCS staff may be required to review legal documents sent to OCS **only** to determine whether the document needs to go to the OCS director's office. Some legal pleadings go directly to an FOC office or an operations unit (e.g., notices from bankruptcy trustees go directly to FOC offices after being logged by OCS staff, and *Motions for Arrears Payment Plan* go to OCS operations). The following descriptions of legal documents and their attachments are a guide for identifying documents that OCS staff must send to the OCS director's office. This is not a complete list. If OCS staff question whether the OCS director needs to review a document, they must contact the OCS Litigation Liaison.

A. Summons

According to Michigan Court Rule (MCR) 2.102, a party commences a lawsuit by filing and serving a summons and complaint. MCR 2.102 requires the following:

1. The court must issue a summons against a specific defendant and under the seal of the court;
2. The summons must have the impression of a court seal;
3. The summons must be served within 91 days of the filing date;
4. Although some exceptions exist, the summons and complaint is served either by personal service or certified mail with a return receipt requested; and

5. When a summons and complaint is served on OCS, the Attorney General's (AG's) staff will file the appropriate responsive pleadings within 21 days if the summons was served personally or 28 days if served by certified mail.

Ref: Attachment 1, *Summons and Complaint* (MC 01), for an example of a summons.

B. Complaint

Parties set forth their claims and the relief sought in the complaint. The parties must file and serve the complaint with the summons, but the summons and the complaint are two separate documents. A complaint can be titled in a variety of ways, including "complaint," "cross-claim," "counter-claim," "third-party complaint," etc.

1. The MCR requires that the complaint:
 - a. Contain numbered paragraphs explaining the basis of the claim and the legal support; and
 - b. Be answered by the responder filing a responsive pleading within 21 days of service if the complaint was served personally or within 28 days if served by certified mail.
2. It is essential OCS staff send the complaint to the OCS director's office immediately so it may be forwarded to the Legal Affairs.

Ref: Attachment 2, *Complaint*, for an example of a complaint.

C. Proof of service

Parties file with the court a proof of service (also known as a certificate of mailing) to certify when service was completed, the address of where the document was served and the method of service. The proof of service may be attached to any of the other documents, or it may be sent later. The proof of service can either be part of the document (e.g., at the bottom of the document) or a separate document. OCS staff action is not necessary, but the OCS Litigation Liaison will retain a copy of the proof of service in case a question about the validity or timing of service arises.

Ref: Attachment 3, *Motion and Order to Show Cause for Contempt (Support)* (FEN140), and Attachment 4, *Proof of Mailing* (MC 302), for examples of proofs of service.

D. Answer

When a party files a complaint against OCS or DHS, the responding party (DHS) must file a responsive pleading within 21 days of service. The AG's staff will draft the appropriate responsive pleading. It is important that the AG's staff receive a copy of any documents received from the party so the AG's staff are prepared to respond to the party's answer at the hearing.

DHS must file affirmative defenses with the answer. The affirmative defenses state what defenses the responding party (DHS) will be arguing. The court may bar a party from arguing certain defenses not pled in the affirmative defenses. Therefore, it is important to include all potential defenses.

Ref: Attachment 5, *Answer to Complaint*, for an example of an answer.

E. Motions

A party can file a motion 28 days or more after the complaint is filed on any issue that the party wishes the court to address. Examples of motions OCS staff may receive include:

1. *Motion to Discharge Arrearages*;
2. *Motion for Abatement of State Arrears*;
3. *Motion to Dismiss Lien/Levy* (or financial institution data match [FIDM] action);
and
4. *Motion for Summary Deposition or Summary Judgment*.

Because there is a limited time to respond to a motion, it is essential to send the motion to the OCS Litigation Liaison immediately.² The OCS Litigation Liaison will send the motion to the proper responders (the OCS director, Legal Affairs, or central operations).³

Ref: Attachment 6, *Motion to Discharge Arrearages*, for an example of a motion and Attachment 7, *Notice of Hearing and Motion* (MC 326), for an example of a hearing and motion notice.

F. Discovery

Forms of discovery include interrogatories, requests to produce, notices of deposition, depositions duces tecum,⁴ subpoenas, subpoenas duces tecum, and FOIA requests.⁵

² The responding party must receive a motion seven days before a hearing if served in person, and nine days if served by mail, and file an answer before the motion hearing date.

³ Certain documents such as bankruptcy, lien and levy, and *Motion for Arrears Payment Plans* are sent to the central operations. Ref: the *OCS Centralized Activities Matrix* at:

http://mi-support.cses.state.mi.us/partneractivities/ocscontacts/Central_Activities_Matrix.pdf and

AT 2005-012, **Revised: Arrears Payment Plan**, at:

<http://mi-support.cses.state.mi.us/policy/stateat/pdf/2005/AT2005-012.pdf>.

⁴ "Duces tecum" means that the document must be produced at the deposition.

1. Interrogatories

Interrogatories are questions or requests for information in written form. A party asks a question, and the responding party must answer the question or make an objection on legal grounds. The responding party must serve answers and objections to interrogatories on the requesting party within 28 days.

Ref: Attachment 8, *Plaintiff's First Set of Interrogatories to Defendant*, for an example of a set of interrogatories.

2. Request to produce

Parties may also request the production of "documents or things." The responding party must produce the requested item or object within 28 days.

Ref: Attachment 9, *Plaintiff's First Request for Documents and Things*, for an example of a request to produce.

3. Notice of deposition

Parties use depositions to examine witnesses before the court hearing. Depositions are scheduled for a certain day and time. It is imperative that the person being deposed, as well as the OCS director, be made aware of the date, time and location of the deposition, and any documents that must be produced at the deposition. If the deposition is "duces tecum," there are documents that the deponent must produce at the deposition.

Ref: Attachment 10, *Plaintiff's Notice of Deposition of SDU Director Duces Tecum*, for an example of a notice of deposition.

G. Subpoena

Courts issue subpoenas to compel individuals to appear or to produce documents and things (subpoena duces tecum). An attorney of record, judge or court clerk signs the subpoena and lists the production dates for the person or describes the materials.

OCS staff must protect confidential information even if a party subpoenas it. The OCS FOIA Liaison, the OCS director and the Legal Affairs will determine whether a motion to quash the request for confidential information will be filed or other action will be taken.

⁵ FOIA is described in Section III of this AT.

Ref: Attachment 11, *Subpoena Order to Appear and/or Produce* (MC 11), for an example of a subpoena for non-confidential requests.

H. Notice of hearing

A notice of hearing may be for a motion, pre-trial conference or trial. Notices are date-sensitive. OCS staff must deliver the notice to the OCS director's office. The OCS Litigation Liaison will deliver the notice to the Legal Affairs and appropriate units immediately.

I. Offer and compromise

A party may make an offer or an offer and compromise to settle a matter. An offer must be accepted within 21 days of being made. If it is not accepted in writing within the 21 days, it is deemed rejected. An arrears payment plan is an example of an offer and compromise, but the arrears payment plan has specific procedures that an offer and compromise may not contain (e.g., timing, different forms).⁶

Ref: Attachment 12, *Plaintiff's Offer and Compromise of Arrears*, for an example of an offer and compromise.

J. Judgments/Orders

The court may require a party to act in a certain manner through a judgment or order. It is important that orders requiring OCS to act be forwarded to the OCS director's office immediately.

Ref: Attachment 13, *Order*, for an example of an order.

III. Process for Handling Requests under FOIA

The public may request public records of any governmental entity by making a FOIA request according to Public Act 442 of 1976 Freedom of Information Act, Michigan Compiled Laws (MCL) sections 15.231 to 15.246. DHS policy requires that each DHS department designate a FOIA Liaison to handle FOIA requests. The OCS director appoints the OCS FOIA Liaison.

A. FOIA requests are time-sensitive. When OCS staff receive a written FOIA request,⁷ they will immediately:

1. Date-stamp the request; and

⁶ Specific payment plans are discussed in AT 2005-012 and AT 2005-036, *Surcharge for the Michigan Child Support Enforcement System (MiCSES) 3.5 Release*, at: <http://mi-support.cses.state.mi.us/policy/stateat/pdf/2005/AT2005-036.pdf>.

⁷ FOIA requests can be received by mail, fax, email or other electronic means.

2. Route the request to the OCS FOIA Liaison through the OCS director's office.

B. The OCS FOIA Liaison will:

1. Make a copy of the request;
2. Immediately forward the original request to the FOIA Coordinator (director of Legal Affairs);
3. Review the copy of the request to determine if it is a routine request⁸ or a non-routine request;⁹
4. Gather the requested records or work with Legal Affairs to determine that the requested records are exempt;¹⁰
5. Separate/redact¹¹ exempt records from non-exempt records;
6. Determine copying and shipping fee estimates;
7. Work with Legal Affairs to coordinate development of the response (*Administrative Handbook Manual* [AHM] 1180-4¹² provides detailed information on FOIA responses, and the response drafter must consult it before drafting the response);
8. Forward the response and documents to the FOIA Coordinator for approval;
9. Communicate with the FOIA Coordinator about requests, responses and fees;
10. Route FOIA requests from the **media** to the DHS Office of Communications; and
11. Retain copies of FOIA requests for one year and FOIA logbooks for three years.

C. Time frames

A written response to the FOIA request must be made within five business days of the receipt date. The response will do one of the following:

1. Grant the request;
2. Deny the request;
3. Grant the request in part and deny it in part;
4. Request a good faith deposit for fees (the reason for the deposit must also be explained);¹³ or
5. Request an extension of the response period for not more than 10 additional business days.

The court may penalize or sanction the agency for failure to respond within five days. The penalty may include punitive damages.

⁸ Routine requests are made by the public.

⁹ Non-routine requests are made by a member of the media, an attorney or a law firm.

¹⁰ The OCS FOIA Liaison may request OCS staff assistance in completing documents. Because of the short time frames to respond, requests for assistance must be given priority status.

¹¹ Redact means identifying things that cannot be produced.

¹² Ref: *Legal & FOIA Issues* section of the online *Policy and Procedure Manuals* at: <http://mi-support.cses.state.mi.us/policy/onlinemanuals/>.

¹³ A deposit cannot be required unless the fee exceeds \$50.

D. Exemptions¹⁴

1. FOIA statutes exempt the following information from disclosure:
 - a. Information of a personal nature, if public disclosure constitutes a clearly unwarranted invasion of an individual's privacy;¹⁵
 - b. Records or information exempted from disclosure by statute and regulations. Information regarding IV-D service recipients may be disclosed to the court **only** when there is an investigation, prosecution, or criminal or civil proceeding conducted concerning the child support program (Ref: Section III. D. 2. in this AT);
 - c. Information or records subject to attorney-client privilege;
 - d. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, a minister privilege or another privilege recognized by state law;¹⁶
 - e. Communications and notes within a public body or between public bodies of an advisory nature, to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action, when it is shown that frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure; and
 - f. Information or records that would disclose the Social Security number of an individual.

2. OCS staff must protect confidential information even if a party to the case makes a FOIA request.¹⁷ Confidential IV-D case information includes:
 - a. OCS and FOC staff notes from investigations, mediation sessions and settlement conferences;
 - b. DHS protective services reports;
 - c. Formal mediation records;
 - d. Communication from minors;
 - e. FOC grievances filed by the opposing party and the responses;
 - f. A party's address or any other information if release is prohibited by court order; and
 - g. All information classified as confidential by the laws and regulations of Title IV-D of the Social Security Act:
 1. Disclosures to unauthorized people;

¹⁴ MCL 15.243

¹⁵ OCS and Legal Affairs staff will determine if exemption is warranted.

¹⁶ MCL 600.2156, 600.2157, and 600.2162

¹⁷ Ref: AT 2004-022, *Responding to Requests for Confidential Information*, at:

<http://mi-support.cses.state.mi.us/policy/stateat/pdf/2004/AT2004-022.pdf> and State Court Administrative Office (SCAO) Administrative Memorandum (ADM) 2003-07, *Confidentiality and Access to Friend of the Court Records*, at: <http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-07.pdf>.

2. Whereabouts of parties when a protective order exists;
 3. Whereabouts of parties when there is reason to believe that release of the information to that person may result in physical or emotional harm to the party or the child;
 4. Disclosures of information that could be harmful to the party or child;¹⁸ and
 5. Federal tax information.
3. OCS staff must not provide personal information about recipients of Family Independence Program (FIP) grants to the non-custodial parent or the public.
 4. If a public record contains materials that are exempt and non-exempt, the OCS FOIA Liaison will separate the exempt material from the non-exempt material and make the non-exempt information available for examination and copying.

E. Approval of response

Only the director of Legal Affairs, the FOIA Coordinator or the FOIA Coordinator's designee has the authority to review, approve and sign responses to a request. The OCS FOIA Liaison must provide the FOIA Coordinator the response with enough time to review before the statutory five-day deadline.

LEGAL REFERENCES:

Federal
5 USC 552
42 USC 654(26)

State
MCL 15.231 to 15.246
MCL 600.2156
MCL 600.2157
MCL 600.2162
MCR 2.102

POLICY REFERENCES:

AHM 1180-4 – *Request for Public Records/Freedom of Information Act (FOIA)*
AT 2004-022, *Responding to Requests for Confidential Information*
AT 2005-012, **Revised:** *Arrears Payment Plan*
AT 2005-036, *Surcharge for the Michigan Child Support Enforcement System (MiSCES) 3.5 Release*
OCS Centralized Activities Matrix
SCAO ADM 2003-07, *Confidentiality and Access to Friend of the Court Records*

¹⁸ Title 42 of the United States Code (USC), Section 654(26) (42 USC 654[26])

AT MAINTENANCE: Retain AT until further notice.

EFFECTIVE DATE: Effective upon receipt.

REVIEW PARTICIPANTS: David Huntley, Alpena County FOC
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CC: None

ATTACHMENTS:

1. *Summons and Complaint* (MC 01)
2. *Complaint*
3. *Motion and Order to Show Cause for Contempt (Support)* (FEN140)
4. *Proof of Mailing* (MC 302)
5. *Answer to Complaint*
6. *Motion to Discharge Arrearages*
7. *Notice of Hearing and Motion* (MC 326)
8. *Plaintiff's First Set of Interrogatories to Defendant*
9. *Plaintiff's First Request for Documents and Things*
10. *Plaintiff's Notice of Deposition of SDU Director Duces Tecum*
11. *Subpoena Order to Appear and/or Produce* (MC 11)
12. *Plaintiff's Offer and Compromise of Arrears*
13. *Order*

MFS/DES