FRIEND OF THE COURT HANDBOOK

JUNE 2010

ROSCOMMON COUNTY FRIEND OF THE COURT
34TH JUDICIAL CIRCUIT

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Chief Circuit Court Judge

Honorable Michael J. Baumgartner
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Introduction

This handbook summarizes the duties and procedures of the friend of the court (FOC), provides information about parties' rights and responsibilities, and describes some basic court procedures.

The family division of the circuit court decides divorce, paternity, custody, and support matters. The FOC is part of the circuit court and is supervised by the chief judge. The FOC helps the court administer on those types of cases.

Parents can make family disputes less stressful for their children by maintaining their children's regular routines, encouraging frequent contact between the children and both parents, supporting the other parent's involvement in the children's schooling and other activities, and exchanging information about the children. Children want both parents to be part of their lives, to attend their graduations and weddings, to celebrate the births of their children, and to be part of other major life events.

Parties' Rights and Responsibilities

Each Party Has the Right To:

- Meet with the FOC employee who is investigating custody or parenting time.
- Ask the FOC to recommend that an order for support or health insurance be modified. See the section entitled, *Party's Motion to Modify the Support Order*.
- Expect the FOC office to perform its duties under Michigan law and court rules.
- File a grievance concerning an FOC employee or an FOC office procedure.
- Hire and consult an attorney.
- If the parties agree and the court approves, decline all FOC assistance ("opt-out").

Each Party Has the Responsibility To:

- Provide the following information ***in writing*** to every FOC office that is administering a case involving that party, and provide updates to this information as it changes:
    - A current residential address.
    - A single, current mailing address where all notices and papers should be sent.
    - Current employer's (or other source of income) name, address, and telephone number.
    - Current telephone number (residential or mobile).
    - Occupational or driver's licenses held, and license number(s).

- Social security number, unless exempt by law from disclosing that number.
- Current address of children.
- Current information regarding health care coverage that is available to either party as a benefit of employment, or that either party purchases directly from an insurer.

- Provide other information required by law to help the FOC carry out its duties.
- Obey all court orders.

Friend of the Court Duties

The Michigan Legislature created the FOC system in 1919. At least one FOC office serves each circuit court's family division. The FOC performs the following duties:

- When directed by the judge, it investigates and makes recommendations to the court regarding:
  - Custody;
  - Parenting time;
  - Child support, medical support, and sometimes spousal support.
- It offers voluntary alternative dispute resolution (ADR) services to help settle disagreements about custody or parenting time.
- In cooperation with the Michigan State Disbursement Unit (MiSDU), it collects, records, and distributes support payments as ordered by the court.
- It helps the court enforce orders of custody, parenting time, and support.
- It informs the parties that they may decline FOC services.
- It makes available forms that parties may use to file motions and responses regarding custody, parenting time, support, change of domicile, and repayment plans.
- It informs the parties of the availability of joint custody.

The FOC has no authority to:

- Investigate abuse and neglect.
- Change an order.
- Investigate criminal activity.

- Give legal advice to either party.

Together with the Office of Child Support (OCS), local FOC offices administer all aspects of Michigan's child support program. OCS is part of the Michigan Department of Human Services (DHS). OCS administers the child support requirements of the federal Social Security Act, oversees the MiSDU, and oversees Michigan's child support computer system.

This handbook describes the general duties of the FOC. Some specific procedures vary by county. You may discuss any questions regarding local or statewide procedures or requirements with your local FOC office or with your attorney.

To become familiar with some family law and FOC legal terms, please refer to the glossary at the end of this handbook.

Opting Out of All Services Offered by the FOC

Parties who agree that they do not need the FOC's services do not have to use them, unless certain circumstances apply. They may file a joint motion to opt-out and, if the court approves it, the parties then must deal with each other directly. Before the court approves a motion to opt-out, the parties must file a document that summarizes FOC services and acknowledges that the parties have chosen not to use those services.

If an opt-out motion is filed at the same time as the complaint that starts the case, the court must order the FOC not to open a case file unless one or more of the following are true:

- A party is eligible for "Title IV-D services," because the party receives or has received in the past "public assistance." Please see the glossary for definitions.
- A party has applied for IV-D services.
- A party has asked the FOC to open a case file.
- There is evidence of domestic violence or bargaining inequality, and evidence that the opt-out request is against the best interests of a party or the child.

After a court case has been started and the FOC has opened a file for that case, the parties may file an opt-out motion requesting the court to order the FOC to close its file. The court will issue the order unless one or more of the following are true:

- A party objects to the closure.
- A party is receiving public assistance.
- Within the past 12 months, a support arrearage has existed, a custody or parenting-time violation has occurred, or a party has asked the FOC to reopen its case file.
- There is evidence of domestic violence or bargaining inequality coupled with evidence that the request is against the best interests of a party or the child.

Parties who opt-out are responsible for administering and enforcing the court's orders. To assure a proper accounting of support payments and their consideration in future proceedings, the parties may make support payments through the MiSDU even after an FOC case file is closed.

At any time, if a party applies for public assistance, requests any service from the FOC, or requests that the FOC reopen a case, the FOC must reopen the case file. In such situations, the court may request that a party, or the FOC, prepare a written order to reopen the case.

Court Procedures

Starting a Case

No court can require a party to use an attorney. Anyone, including a party acting without an attorney, who wants to start a court case, must follow Michigan Court Rules and Michigan law. Because domestic relations cases often involve difficult legal and factual questions, most people will want to be represented by an attorney.

Plaintiff's Complaint

A case begins when the person requesting the court's assistance (the plaintiff) files a "complaint" that asks the court to decide a dispute between the plaintiff and the other party (the defendant). In a domestic relations case, the plaintiff may ask the court to do any of the following:

- Grant a divorce.
- Order a person to pay child support (including medical support) or spousal support.
- Establish paternity.
- Establish custody of a child with one (or both) parties.
- Establish each party's parenting time with a child.

Service

The plaintiff must arrange for the defendant to be served with a summons and a copy of the complaint. The summons tells the defendant to answer the complaint. Whenever minor children are involved or spousal support is requested, an informational handbook (this handbook or one like it) must also be given to the defendant.

Defendant's Answer to the Complaint

The defendant is allowed 21 days to answer the complaint. If the defendant does not answer within 21 days, the judge may enter an order granting the plaintiff's requests.

Hearings

After a complaint and an answer have been filed, either party may file a motion asking the court to decide custody, parenting time, and child support issues. The FOC will often conduct an

evaluation before the court makes a decision regarding custody, parenting time, or child support.

The court usually holds a hearing to get whatever additional information it needs. At the hearing, the parties can tell the court what they think it should do.

Court Orders

When a court makes a decision, it must sign a written order summarizing the decision. Someone must prepare the order; usually, one of the attorneys prepares the order, but sometimes a court employee prepares it. In cases where a party is unrepresented by an attorney (often called "in pro per" or "pro se"), the court may require that a party prepare the order and present it to the court. No matter who prepares the order, it is not enforceable until a judge signs it and the signed order is filed with the county clerk. A referee can only recommend an order and prepare it; the recommended order does not become enforceable until a judge signs it. If a party disagrees with an order and wants to challenge it, the party may file a motion for a rehearing (by the judge who issued the order) or file an appeal (to a higher court). A party cannot change an order by filing a grievance or by complaining to other government agencies.

Preliminary Order

Courts sometimes enter temporary orders that remain in effect only until the parties have an opportunity to present more detailed evidence and arguments at a later hearing. This often happens in divorce cases.

Ex Parte Order (temporary orders entered at the request of one party before any formal hearing)

An ex parte order is an order that is entered without first hearing from all the parties. A judge will enter an ex parte order when the judge believes that serious harm will occur if the judge waits to hear from both parties before issuing the order. Ex parte orders usually are intended to keep the situation stable until the judge can hear from both parties. A party who disagrees with an ex parte order may file a written objection to the order or file a motion asking the court to change or cancel the order, but the ex parte order will remain in effect until it is changed by the court.

When an ex parte order deals with custody, parenting time, or child support, the order will include a notice that a written objection or a motion to change the order may be filed within 14 days. If a party files an objection, the FOC will try to help the parties settle the dispute without going to court. If the parties cannot agree, the FOC will provide the forms and instructions that a party who is not represented by an attorney will need to schedule a court hearing.

Instructions on challenging an ex parte order are available at:

http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/p05.pdf

Temporary and Final Orders

After a court decides a motion challenging an ex parte order, the court will enter a temporary order with instructions that the parties must follow until a final judgment order (or a modified

temporary order) is entered.

Orders (including judgment orders that deal with custody, parenting time, and child support) can be changed, but only a court can change an order; the FOC cannot. Normally, a court will change an order if both parties have agreed to the change. Otherwise, a court will change an order only after one party (or the FOC) files a motion and the court holds a hearing on the motion.

Even if the parties agree to change a previous court order, the court and the FOC cannot follow the new agreement until the judge signs and enters a new order that approves the agreement.

Sometimes, the law requires the FOC to ask the court to change an order. (See *Parenting Time Enforcement* and *Modification of a Child Support Order* later in this handbook).

Referee Decisions

A referee is not a judge, but performs some tasks on behalf of the judge who is presiding over the case. A referee may hold hearings, examine witnesses, and make recommendations to a judge. The chief judge of a circuit court may appoint a referee to hear testimony and arguments on any issue in a domestic relations case except spousal support (alimony). Only a judge may hear testimony and arguments on spousal support.

A referee's decision is only a recommendation to the judge. A referee's recommendation will become a court order only if neither party files an objection within specific time limits, or (if a party does object) only after the court holds a hearing and the judge then signs an order approving the referee's recommendation. The court may make the referee's recommended order effective temporarily until either the time to object to the recommended order expires or the judge hears an objection at a de novo, or new, hearing.

A party who disagrees with a referee's recommendation may request a de novo hearing before the judge. The objection and a request for a hearing must be in writing and must be filed with the circuit court clerk within 21 days after the referee's recommendation is mailed or delivered.

Consult an attorney for more information on how to object to a referee's recommendation and how to request a hearing before a judge. Some FOC offices will provide written instructions that explain how to file an objection.

Reconciliations and Dismissals

Not every domestic relations case ends with the parties divorced or separated. If the parties are trying to work out their differences and no longer wish to have an order in their case enforced, they may file a motion asking the court not to enforce the order.

If the parties wish to stop all further action in a case, they must file a proposed order of dismissal with the court and provide a copy to the FOC. In that situation, when the state of Michigan has provided financial assistance to the parties' children or spouse while the case was pending, the support payer must reimburse any previously ordered child or spousal support to the state of Michigan. This reimbursement amount may be less than the amount of assistance, but it cannot be more. Before the case may be dismissed, the support payer must pay any amounts owed to

the court or the county. If those requirements are met, the court will sign an order dismissing the case.

Enforcing Orders When One Parent Leaves Michigan

The obligation to pay child support does not end when a party leaves Michigan. Both parents must tell the FOC whenever they move. The support payer must continue to pay support and the friend of the court must continue to enforce the court order.

If a support payer leaves Michigan and stops paying as ordered, there are laws that allow Michigan courts to have their support orders enforced in other states. For example, every state has passed a law that allows a court in another state to withhold the payer's income, enforce the order, set or modify a support order, or assist with finding the payer's assets. For more information, see *The Uniform Interstate Family Support Act* (UIFSA) (PSA 29) located at:

http://www.courts.mi.gov/scao/resources/publications/pamphlets/focb/psa29.pdf

Alternative Dispute Resolution (ADR)

Parties involved in a domestic relations case are encouraged to participate in ADR, which may allow them to settle a case without further court proceedings. In addition to parents, ADR may sometimes involve grandparents and other third parties.

ADR allows the parties to settle the issues without the court's direct involvement. Parties often find this rewarding because they make the decisions, instead of the court. The court must still enter an order, but the court order will usually reflect the agreement reached by the parties. The next few sections summarize the kinds of ADR that might be available in domestic relations cases. You should check with your local FOC office to find out what types of ADR services might be available.

Friend of the Court Formal Domestic Relations Mediation

The FOC offers formal mediation services to help parents resolve custody and parenting-time disputes, which are the only two issues that the FOC is allowed to mediate.

FOC mediation is voluntary, meaning that both parties must be willing to participate. If the parties reach an agreement during mediation, the mediator can put it into writing. The parties may review this agreement with their attorneys. The agreement can be made part of a court order.

Matters discussed during mediation are confidential. An FOC employee who acts as a mediator may not share information about what happened during mediation, except for what is stated in the parties' signed agreement. The mediator cannot later, in the same case, enforce an order, investigate an allegation, or serve as a referee regarding any other issues in that case.

Court Rule Domestic Relations Mediation

The court may refer family matters to nonbinding mediation under the Michigan Court Rules, specifically MCR 3.216. This may happen by agreement of the parties, on the motion of one

party granted by the judge, or on the court's own initiative.

Unlike the FOC mediation summarized above, court rule mediation is not necessarily voluntary and is not limited to only custody or parenting-time issues. The court may order mediation for any disputed issue. The parties may agree to have the case mediated by any person who has the qualifications specified in the court rule. If the parties cannot agree on a mediator, the court's ADR clerk will assign one from a list of qualified mediators. The person who performs court rule mediation is entitled to a reasonable fee. The parties usually share that expense equally.

If ordered by the court, court rule mediation is mandatory. The parties must attend the mediation sessions. They may be accompanied by their attorneys. Any information shared with the mediator is considered confidential. The mediator may not disclose this information to anyone.

If the parties reach agreement during mediation, the agreement must be put in writing and be signed by the parties. The parties must then take the necessary steps to have the mediation agreement entered as a court order.

If the parties do not reach agreement, the mediator may prepare a report to the parties setting forth the mediator's own recommendations on the issues. If both parties accept the mediator's recommendations, the parties must then take the necessary steps to have the recommendations entered as a court order. If either party rejects the mediator's recommendation, even in part, then all issues in the case must go to trial. The judge who conducts the trial will not know what the mediator recommended or which party rejected the mediator's recommendation.

Conciliation

Conciliation is a process in which an FOC employee assists the parties in reaching agreement about custody and/or parenting-time arrangements. In the absence of agreement, the FOC employee may prepare a recommendation for a custody or parenting-time court order. Information about the case gathered during conciliation may be used by the court later in other proceedings.

Joint Meeting

The Friend of the Court Act allows the FOC to use joint meetings to assist parties in resolving custody and parenting-time disputes and support recommendations. Joint meetings are similar to conciliation. The difference is that conciliation is used before the first order has been entered; joint meetings are used to resolve disputes after an order has been entered.

Information about Custody, Parenting Time, and Support Payments

Custody

There are many different kinds of custody arrangements. For any arrangement, the court must decide who will make the major decisions about each child. The court also must decide how much time the child will spend with each parent.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge will decide by analyzing the "best interests of the child" factors listed in the

Michigan Child Custody Act. Those factors will be analyzed at a hearing, during which the parents may present evidence and arguments about each factor.

At either parent's request, the court must consider ordering "joint custody," an arrangement in which both parents participate in making the major decisions that affect their child. If both parents agree to a joint custody arrangement, the court must order it unless the court determines that joint custody is not in the "best interests of the child." The court must state its reasons for granting or denying the request for joint custody. The court may also consider ordering joint custody even if neither parent has requested it. A judge who is considering ordering joint custody must consider both the "best interests" factors and also whether the parents will be able to cooperate and usually agree on important decisions affecting their child's welfare.

If the court determines that a child's interests are not adequately represented in the custody proceedings, the court may appoint a lawyer guardian ad litem to represent the child. The court may require the parties to pay the lawyer guardian ad litem's fees.

For more information about child custody issues, see *Michigan Custody Guidelines* at: http://courts.michigan.gov/scao/resources/publications/manuals/focb/custodyguideline.pdf

Custody Questions and Answers

Can a custody order be changed if both parents agree?

Both parents may sign an agreement and present an order to the court. If the judge approves and signs the order, it will then become the new custody order.

Do I need an attorney to file a motion to change custody?

No. You may file the motion on your own, and the FOC will provide the forms and instructions that you will need. The court will expect you to follow the same rules that an attorney must follow. There are many complex issues in a custody case and most people prefer to have an attorney represent them. The FOC cannot file a motion for you, nor can that office provide you with an attorney or tell you what to say in the motion.

If a motion for custody has been filed, and the parents cannot reach an agreement on their own, what will the friend of the court do?

The FOC must:

- Offer ADR services to the parties, depending on which types of services are available in that FOC office.
- If there has been a change in circumstances and the judge directs, investigate the custody issues and file a written report and recommendation based upon the "best interests of the child" factors listed in the Michigan Child Custody Act. Parties should work to resolve their issues before filing a motion.

May I receive a copy of the FOC's custody report and recommendation?

Yes. Upon request, and before the court acts on the recommendation, the FOC must give each party or that party's attorney a copy of the report, including the custody recommendation and a summary of the information used in making the recommendation.

Is there a cost for the custody investigation?

There could be a cost to the parties if the parties request the investigation.

What happens if I have custody according to the court's order, but the other parent does not return the child to me as required by the order?

- You may contact the FOC office and request that it initiate enforcement.
- You may file a motion, with or without an attorney, and ask the court to enforce the order.
- If you believe the other parent will refuse to return the child, you may contact the police or the prosecuting attorney and ask either to file a parental kidnapping charge.

How do I enforce the custody order if the other parent takes our child to another country?

When a child who is a United States citizen is illegally kept outside of this country, the United States State Department's Office of Children's Issues will work with the local U.S. embassy and the other country's government to assist the child and the lawful custodial parent. However, because child custody disputes are private legal disputes between the two parents, the State Department has no jurisdiction to force the other parent to obey a court order. If the parents cannot reach an agreement, this kind of child custody dispute often must be resolved by judicial proceedings in the country where the child and the other parent are living. The State Department will help the lawful custodial parent file the appropriate documents with the foreign authorities. It also will monitor and report on the foreign judicial or administrative proceedings.

A parent may contact the Office of Children's Issues at the United States Department of State, in writing, at the following address: Department of State, Office of Children's Issues, SA-29, 2201 C Street, NW; U.S. Department of State, Washington, DC 20520-2818.

The Office of Children's Issues can be reached by phone at 1-888-407-4747, by fax 202-736-9080, or at the state department's website for foreign travel at http://travel.state.gov/family/family_1732.html

Is the FOC allowed to investigate child abuse or neglect?

The FOC does not have authority to investigate abuse or neglect. Abuse or neglect should be reported to the Child Protective Services (CPS) division of the Department of Human Services (DHS) in the county where the children live.

A judge may consider allegations of abuse or neglect when making a decision regarding custody or parenting time. A party should inform the FOC of any concerns about abuse or neglect if the FOC is doing a custody or parenting-time investigation. Both the judge and the FOC will rely on Child Protective Services to investigate and evaluate the abuse or neglect allegations.

May my child enroll in my local school, even though the child lives in another school district with the other parent most of the time?

When the parents live in different school districts, Michigan law allows a child to attend a school in either district, regardless of which parent has custody.

Parenting-Time

A parenting-time order specifies when a child will spend time with each parent. A parent is responsible for all routine decisions that affect the child during his or her parenting time. The Michigan Child Custody Act states:

> Parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time. If the parents of a child agree on parenting time terms, the court shall order the parenting time terms . . . [unless it is shown] that the parenting time terms are not in the best interests of the child. A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health. [MCL 722.27a(1)-(3).]

The statute also lists factors that the judge may consider when determining the frequency, duration, and type of parenting time. (MCL 722.27a[6].)

Sample Parenting-Time Guidelines are available on the Michigan Supreme Court's website at:

http://courts.michigan.gov/scao/resources/publications/manuals/focb/pt_gdlns.pdf

Some courts may have other guidelines in use, instead of the state sample guidelines. You should contact your local FOC office to find out whether it enforces county-specific guidelines. Some local counties have guidelines that are posted at the following website. This list is not comprehensive – you should contact your local FOC office to find out about local guidelines:

http://courts.michigan.gov/scao/services/focb/ParentingTime.htm

In some situations, issues and disagreements that arise regarding parenting time may be resolved through ADR. You should contact your local FOC office to determine what services may be available, and whether they are appropriate for the situation.

Parenting-Time Enforcement

The FOC is required to enforce parenting-time orders. The FOC office usually starts enforcement action when it receives a written complaint stating specific facts that show a violation of an order governing custody or parenting time. The FOC may decline to respond if (1) the alleged violation occurred more than 56 days before the complaint is made, (2) the complaining party has previously made two or more similar complaints that were found by the court to be unwarranted and the complaining party has failed to pay the costs assessed in those prior proceedings, or (3) the court order does not include an enforceable parenting-time provision.

The FOC starts enforcement proceedings by sending a copy of the written complaint to the other party within 14 days after the FOC office receives the complaint. If the FOC finds that the court's order has been violated, the FOC has the following options:

- Suggest "makeup" parenting time.
- Start an action requiring the party to show cause why the court should not find the party in contempt.
- File a motion to modify existing parenting-time provisions.
- Schedule mediation, depending on the type of ADR services available in your county.
- Schedule a joint meeting with the parties.

Parenting-Time-Modification Motions

A party may file a motion to change the parenting-time order, if the party can show proper cause or a change in circumstances. The FOC office has printed forms and instructions for filing this type of motion. Parties may want to hire an attorney to assist with the motion.

If both parents agree to change the parenting-time arrangement, they may sign an agreement to that effect and ask the judge to modify the current order. Even though the parties have agreed to a change, the current order remains in effect until the judge signs a new order and it is filed with the court clerk.

Parenting-Time Questions and Answers

My order states I will have "reasonable" parenting time. What does this mean?

An order that grants "reasonable" parenting time assumes that you and the other parent will agree to a parenting-time schedule that is convenient to both of you and to the child.

If you and the other parent cannot agree on a "reasonable parenting time" schedule, you may:

- Ask the other parent to agree to attend mediation with the FOC.
- Ask the FOC whether the order is specific enough to allow the office to offer assistance.
- File a motion on your own or contact an attorney.

I would like to change my order's parenting-time schedule. What can I do?

First, ask the other parent to agree to a change. If you agree, you should prepare an order containing your agreement and provide proof to the court that both of you agree to the order. The judge will typically sign an order that is based on the parents' agreement. Remember that the agreement by itself is not enforceable; it must first be converted into a new court order.

If no agreement is possible and you can show proper cause or a change in circumstances, you may file a motion asking the court to order a new parenting-time schedule. You may file the

motion on your own, or have an attorney file it for you.

The other parent is not making the child-support payments required by our court order. Do I have to allow parenting time?

Yes. You must continue to obey the order's parenting-time provisions. Ask the FOC to enforce the child support provisions (see *Enforcement Methods* later in this document).

The other parent is not sending or returning clothing or other personal items that our child uses during parenting time. Can the FOC do something about that?

The FOC can only enforce the court's written orders. If your court order does not say anything specific about transferring clothing or other personal items, try to work it out with the other parent. If that is unsuccessful, you may file a motion requesting a new court order that will require that clothing or other personal items be transferred along with your child before and after parenting time.

The other parent is not obeying the parenting-time order. What can I do?

File a written complaint with the FOC (see *Parenting-Time Enforcement*). Some counties have a specific form to use when filing a parenting-time complaint. Please contact your local county to find out how to proceed.

If I believe that the other parent is under the influence of alcohol or drugs, do I have to let the children go with that other parent for scheduled parenting time?

That is your decision as a parent. If you violate the court order in such a situation, you may have to explain your decision to the court at a "show cause" hearing held to decide whether you should be held in contempt of court for disobeying the parenting-time order. The hearing will be your opportunity to explain why your decision was in the best interests of the children. If the judge agrees, you will not be held in contempt or otherwise punished.

The other parent will not let me telephone my children. What can the FOC do?

The FOC can only enforce the court's orders. If your court order does not provide for telephone calls, try to negotiate an agreement with the other parent. You can also contact your local FOC office for guidance on how to proceed. In addition, you may file a motion asking the court to modify the order to require that you be allowed to call your children.

I think that my child is being abused during parenting time that is spent with the other parent. What should I do?

Report your concerns to the DHS's CPS division in the county where the children live. The FOC does not have authority to investigate abuse or neglect allegations, nor can it remove children from the home of a person who commits or allows mistreatment; only CPS can do that. CPS can be reached at 1-800-942-4357 (statewide) or 1-800-716-2234 (Wayne County).

My child does not want to spend time with the other parent. What can I do?

Parents must obey court orders regardless of the child's age and preferences. Each parent must try to promote a positive relationship between the child and the other parent. You may want to try the following:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, and/or suggest that the other parent does the same.
- Contact the FOC and request mediation.
- File a motion asking the court to change your parenting-time order.

The other parent refuses to see our children. What can the FOC do?

The FOC cannot force a parent to see his or her children. To promote a positive relationship with the children and the other parent, you may wish to consider counseling, mediation, or filing a motion to change the parenting-time order.

Support

A "support order" in the form of a Uniform Support Order (USO) is any court order that requires a party to pay:

- Child support.
- Spousal support (formerly called "alimony").
- Medical, dental, and other health care expenses for the child(ren).
- Confinement expenses (the mother's childbirth costs and medical bills).
- Child care expenses.
- Educational expenses.

All support orders state an amount that is due on the first day of each month. Support is past due if not paid by the last day of the month. When an order takes effect on a day other than the first day of a month, the support amount must be prorated for the partial month. Unless an order gives a specific end date, support will end on the last day of the month specified by the order. The last month of support will not be prorated to a certain date.

Support Investigations and Reports

The FOC is required to periodically review an order's child support provisions, including health care. The FOC will ask the court to modify the order if a change is warranted (see *Modification of a Support Order*). As part of this periodic support review, the FOC may request information, such as a parent's earnings, details of any dependent health care coverage available as a benefit of employment, specifics about a tax refund, and job or education history. The court can also order an evaluation of the current order's support.

Child Support Formula

Michigan law requires a child support formula be used to determine how much child support a parent must pay. That formula considers the parents' incomes and other factors. The court may set a different support amount, but only if the judge explains in writing or during a court hearing why the formula number is unjust or inappropriate. For more information about the child support formula, see *Facts about the Michigan Child Support Formula* (PSA 24) at:

http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa24.pdf

More information is available on the Michigan Supreme Court's website at:
http://courts.michigan.gov/scao/services/focb/mcsf.htm

Support Payment Procedure

Unless otherwise ordered, support payers must make their payments to the Michigan State Disbursement Unit (MiSDU). When a payment received by the MiSDU sufficiently identifies the person to whom the support should be paid, the MiSDU must forward the money to the recipient within two business days.

In most cases, support payments are automatically withheld from a payer's wages. A payer who pays the MiSDU directly should clearly identify the case number with the payment. Do not send cash through the mail.

Once a year, upon a written request, the FOC will give the parties a free statement of their support account.

Information regarding a support account is available through the MiSDU or online through MiCase. A party may also call the office that has the support order. MiSDU phone numbers, by county, are available at:

https://www.misdu.com/secure/GeneralInformation/IVRPhoneNumbers/tabid/64/Default.aspx

MiCase is available at: michigan.gov/micase

Statutory Service Fees

Michigan law requires the FOC to charge the support payer a service fee, currently $3.50 per month. Federal law requires the FOC to charge the support payer a federal service fee, currently $25.00 per fiscal year.

Surcharge on Overdue Support (Arrears)

Some overdue support cases have surcharges added. A surcharge is fully enforceable as support. Automatic surcharges were eliminated in 2010. Previously assessed surcharges are not forgiven, and are still enforceable; however there will be no further automatic surcharge amounts. Starting on January 1, 2011, the court may order a surcharge as a sanction for failure to pay support.

Automatic Support Enforcement

When support payments are more than one month past due, the FOC must begin enforcement

action without waiting for a request for enforcement. Some enforcement beings immediately following entry of an order, including income withholding and enforcement of health insurance coverage.

Enforcement Methods

The FOC has several methods of collecting past due support. They include:

- **Immediate Income Withholding**

  The FOC can require the support payer's employer (or other income source) to withhold some of the support payer's income and send the money to the MiSDU. The payer will be notified before the income withholding starts by receiving a copy of the income withholding notice. The FOC can administratively adjust (usually by increasing) the income withholding if there is an arrearage on the case, but the FOC office must first send the payer a notice of arrearage. The payer can object to the adjustment after receiving the notice of arrearage. The withheld amount cannot exceed 50 percent of the payer's disposable earnings.

  Support orders must provide for income withholding even without a showing that the support payer has missed payments or is likely to do so. A court may not require income withholding only if it finds "good cause" for departing from the general rule. Good cause exists when **all the following exist:**

  - The court makes a specific written finding that income withholding is not in the best interests of the child;
  - All previously ordered support has been paid on time; and
  - The payer agrees to keep the FOC informed of the name, address, and telephone number of his/her current source of income, and about any health care coverage offered by the payer's employer or coverage that the payer purchases directly from a health insurer.

  If "good cause" is not found, the parties can still request that an income withholding not be put in place. Both parties and the court can agree that the income withholding will not take effect immediately because a satisfactory alternative payment arrangement has been made. Even in this situation, the payer must keep the FOC informed of the name, address, and telephone number of his/her current source of income, and about any health care coverage offered by the payer's employer or coverage that the payer purchases directly from a health insurer.

- **Contempt of Court (Show-Cause Hearing)**

  If support is not paid on time, the FOC or a party may begin a contempt action against the payer. The court will order the payer to appear in court and "show cause" why the court should not find the payer "in contempt of court." If you fail to appear for a show-cause hearing, the court may issue a bench warrant for your arrest. If you are found in

contempt of court, the penalties may include a fine up to $250.00, suspension of licenses, and/or jail time of up to 45 days (90 days for a second offense).

For more information about show-cause proceedings, see *Show Cause Proceedings in Domestic Relations Cases* (PSA 25) at

http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa25.pdf

- **Income Tax Intercept**

  If child support is overdue and the case otherwise satisfies federal and state requirements, the FOC must request an income tax "intercept." In such cases, any tax refund to which the support payer is entitled will be paid to pay past due support. For more information about tax intercepts, see *Tax Refund Offset Program* (PSA 13) at http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa13.pdf

- **Other Enforcement Remedies**

  If the payer is more than two months behind on the support payments, the FOC must report the arrearage to a consumer credit reporting agency. The court may also suspend the payer's driving, occupational, sporting, and/or recreational licenses. Also, the FOC may place a lien on the payer's real and personal property, which then can be sold to pay the support arrearage.

  For more information, see: *Friend of the Court Enforcement of Domestic Relations Orders* (PSA 27) at:

  http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa27.pdf and *Information about Using Liens to Obtain Past Due Support* (PSA 23) at:

  http://courts.michigan.gov/scao/resources/publications/pamphlets/focb/psa23.pdf

- **Criminal Nonpayment of Support**

  Federal and Michigan law make failure to pay child support a criminal offense. The FOC does not bring felony charges. Charges based on Michigan law are filed and prosecuted by county prosecutors or the Attorney General. Federal charges are prosecuted by the United States Attorney's office.

- **Health Care Enforcement**

  The court may order one or both parents to provide health insurance coverage for the children. If the court orders a parent to obtain available health insurance coverage from an employer and the parent fails to do so, the FOC will send a medical support notice to the parent's employer. The employer then must enroll the employee's children in the employer's plan and deduct the premiums from the employee's wages. According to the Michigan Child Support Formula, a reasonable cost for providing private health care coverage for the children does not exceed five percent of the providing parent's gross income.

The FOC will help collect the other parent's share of extraordinary medical expenses (the support recipient's out-of-pocket expenses that exceed the children's ordered annual ordinary medical expense amount and any uninsured medical expense paid by the support payer) if the following four conditions are satisfied:

- The amount exceeds the annual ordinary amount in the order, or the requesting parent is the support payer.
- One parent requested payment from the other parent within 28 days after receiving an insurer's determination that an expense was not covered.
- The other parent did not pay within 28 days of the request for payment.
- The FOC's assistance is requested within one year after incurring the expense, or within six months after the insurer has denied coverage, or within six months after the other parent failed to pay as required.

If the FOC receives a parent's request that meets those four requirements, the FOC will notify the other parent that, if no objection is filed within 21 days, the unpaid amount will become a support arrearage and subject to any of the enforcement processes summarized earlier. If an objection is filed, the FOC must schedule a court hearing to decide who is responsible for the amount that the health insurer did not pay.

If health insurance is not provided through the support order, coverage might be available through MI-Child or Medicaid programs. Find more information about Medicaid programs online at: http://michigan.gov/dhs/0,1607,7-124-5453_5530-20591--,00.html

Modification of a Child Support Order

The FOC will review child support orders automatically once every 36 months if the child or the custodial parent is receiving public assistance. In other cases, the FOC will conduct a review on written request by a party, but not more often than once every 36 months, unless the party proves a substantial change in circumstances. A party who needs an immediate change in the support amount should file a court motion requesting the change. Merely notifying the FOC that one parent's financial situation has changed cannot automatically change the ordered support amount.

Threshold for a FOC Motion to Modify the Support Order

The FOC will ask the court to change the monthly support payment if the difference between the current support amount and the amount determined by the standard child support formula (using the parties' most recent income data) is at least 10 percent or $50.00 per month, whichever is greater. If the difference between the current support amount and the current formula amount is less than that minimum threshold, the FOC is not required to request a change.

Party's Motion to Modify the Support Order

A party may file a motion to change the support order. The FOC will provide forms and instructions to a party who wishes to file this type of motion without the assistance of an

attorney, but will not complete the motion for the party. Alternatively, a party may hire an attorney to file a modification motion.

Agreement to Modify the Support Order

If the parties agree to change the support amount to a different amount determined by the child support formula, they may sign an agreement. That agreement, once put in the form of an order, signed by the judge, and filed with the court clerk, becomes the new support order.

Retroactive Modification of Support Generally Not Allowed: Exception

Once child support is ordered, a later increase or decrease in the support amount generally cannot apply to any time period before the motion for a change was filed. Michigan law recognizes one exception to that rule: a court may modify support retroactively if a party who has been ordered to do so has intentionally failed to report an income change to the FOC or has misrepresented that party's income.

Child Support Questions and Answers

How do I get an order for child support?

If no one has commenced a lawsuit that raises the child support issue, a party must first file a complaint that requests that the court enter a child support order. If both parties agree to a support amount determined by the child support formula, they can sign an agreement. Once that agreement is put in the form of a Uniform Support Order, signed by the judge, and filed with the court clerk, it becomes the court's support order. If the parties do not agree to follow the formula, the judge will determine the appropriate support amount.

Do I need an attorney to get a support order?

No, but you are expected to understand court rules and state laws if you act on your own.

May I receive child support after my child reaches age 18?

Child support can continue up to age 19 1/2 if the child attends high school on a full-time basis with a reasonable expectation of graduation, and the child continues to reside on a full-time basis with the person who receives the support payments. Effective December 28, 2009, support orders have included the specific date when support will end.

If I have been paying child support as required by the court's order but the other party will not allow me the order's parenting time, do I have to keep paying support?

Yes. An order's parenting-time and child support provisions are enforced separately (see *Parenting-Time Enforcement*).

The other parent is not paying child support as ordered. What can I do?

Contact the FOC for enforcement help if the other parent is more than one month behind on the support payments. You may also hire an attorney to start enforcement proceedings.

My court order says to pay support through the Michigan State Disbursement Unit. May I pay the other parent directly?

No, and you might not receive credit for payments made directly to the other parent.

If I am receiving Temporary Assistance for Needy Families (TANF) or Family Independence Program (FIP) public assistance, may I also receive child support?

All child support payments must be routed through the MiSDU, which sends the payment to the state. The state may pass through some of that child support directly to you.

Will FOC make sure that child support money is spent on the children?

No. The law does not authorize the FOC to investigate how support payees spend child support payments. The court may change the custody arrangements if you can show that the other party has neglected the children's needs.

Will the court modify the support order if the payer is in jail or prison?

The support amount is determined by the child support formula, which considers the parties' incomes. The FOC is required to initiate a review within 14 days of receiving notice that a parent has been incarcerated or released from incarceration. The FOC will not be able to modify a support order without notice of the change in circumstance.

My license was suspended by the FOC. How can I have it reinstated?

Upon showing you are in compliance with the court's orders (which may include paying off arrearages or setting up a payment plan), you must get a Compliance Certificate for License Reinstatement from the FOC, and pay a $45.00 clearance fee at the Secretary of State.

Miscellaneous Questions and Answers

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the children's residence?

If a party wishes to relocate over 100 miles away, the parties may agree to change of residence (domicile) by signing an agreement. This agreement must be put in the form of an order. When signed and filed with the court clerk, it becomes an order of the court. If you and the other parent cannot agree on the proposed change of domicile, you may:

- Try the ADR services offered by the FOC; or
- File a motion that asks the court to enter an order approving the change.

Providing notification to the FOC that you intend to move the children (or *filing* a motion requesting the court's approval) does not automatically allow you to move your children. You must obtain a court order approving the move.

Enforcement of Judge's Oral Ruling

Why won't the FOC enforce what the judge said in court, even if it's not in the written order?

The FOC enforces *written* orders. If you think a written order does not say what the judge said in court, first speak to the person who prepared the order and request a change. If necessary, you can file a motion that asks the court to correct the order.

Property Settlement

Can the FOC enforce property settlement provisions in my judgment of divorce?

No. The FOC has no authority to enforce the court's property division order.

Access to Friend of the Court Records

May I review the FOC file for my case?

Parties and their attorneys are entitled to see most of the information in their FOC file. There are exceptions for certain confidential documents. See MCR 3.218. The FOC may charge a reasonable fee for copying records.

If the FOC office will not let you see its file, you may file a motion asking the court to intervene on your behalf to allow access.

May other persons see my FOC file?

An FOC file is not public information. However, MCR 3.218 provides access to FOC files for certain individuals or agencies.

Access to Other Records

May I see my child's school, medical, and other records if my child lives with the other parent?

Michigan law gives both parents the right to see certain records. These records include medical, dental, school, and day-care records. Both parents are entitled to receive advance notice of meetings that concern their child's education; however, the FOC cannot enforce that law. You may wish to consult an attorney if you are denied any of those rights.

Adoptions, Marriages, and Military Enlistments; How They Affect Child Support

What happens to my child support order if my child is adopted, marries, or enters the military service?

When any of these occur, the court will grant a motion ending the obligation to pay further child support. Copies of adoption orders, marriage records, or military service records should be provided to the court. Any overdue support must still be paid.

Parent Locator

Will the FOC help find a missing parent?

Yes. The state and federal governments have a parent locator service that may be used to locate a parent for any of the following purposes:

- To collect child support.
- To obtain a court order on a child custody or parenting-time matter, or enforce an existing order of either type.
- To enforce state or federal law prohibiting the unlawful taking or restraint of a child.

When using the parent locator service, the following information is very helpful:

- The missing parent's full name, date of birth, and social security number.
- The missing parent's last known address.

Citizen Advisory Committee

What is a Citizen Advisory Committee and what does it do?

Each county may appoint a Friend of the Court Citizen Advisory Committee (CAC). CACs make recommendations to the county board of commissioners and chief judge about the FOC office's performance and the community's needs for FOC services. A CAC may review a grievance filed with the CAC about FOC office operations. To find out if your county has an active CAC, please contact your local FOC.

Who can serve on my county's Citizen Advisory Committee?

The county board of commissioners or the county executive appoints the "public" members of the CAC. To be appointed, a person must live in the county. The public appointees include a noncustodial parent, a custodial parent, an attorney who specializes in family law, a mental health professional who provides family counseling, and two members of the public who do not fit into any of those categories. In addition, the CAC must include the county sheriff, the county prosecutor, and the county director of the DHS or their designees.

Complaints about Attorneys, Judges, or the FOC

How do I file a complaint about the FOC?

The Friend of the Court Act includes a grievance process. Parties may use it to express concerns about an FOC office's operations or employees. A grievance may not be used to change the FOC's recommendation, or to challenge a referee's recommendation or a judge's decision. Depending on the subject of the grievance and when it is filed, the response will be from the FOC, the chief judge, or the local CAC.

There are two ways to file a grievance:

(1) A party may file a grievance about the FOC office's operations or employees with the local FOC office by writing a letter, using the heading "Grievance" or using a

grievance form from the local FOC office or from the Michigan's One Court of Justice website at:
http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc1a.pdf

Within 30 days, the FOC must investigate the grievance and respond in writing or explain why a response cannot be provided within that time.

If a party is not satisfied with the FOC's response, the party may file the same grievance with the chief circuit court judge.

(2) A party may file a grievance about office operations with the CAC.

Grievances filed with the CAC may only discuss FOC office operations, not individual employees. Since the committee's role is advisory, it cannot decide the grievance. If the committee or subcommittee is reviewing, investigating, or holding a hearing on a grievance, the meeting will be closed to the public. After the committee or subcommittee meets, it then can report its findings to the chief judge and the county board of commissioners.

How do I report misconduct of a judge or referee?

The Judicial Tenure Commission (JTC) reviews allegations of misconduct by judges or referees. The JTC Commission can recommend that the Michigan Supreme Court discipline a judge or referee who has acted unethically. However, the JTC is not a court; that means that it cannot change a court order or a referee's recommendation. To obtain that relief, a party must either seek rehearing by the same court or file an appeal.

If you wish to file a complaint about misconduct by a judge or referee, contact:

Judicial Tenure Commission
Cadillac Place, Ste 8-450
3034 W. Grand Blvd.
Detroit, Michigan 48202
(313) 875-5110

How do I file a complaint about my attorney?

The Attorney Grievance Commission investigates complaints of misconduct by Michigan attorneys. If you wish to file a complaint (called a "request for investigation"), contact:

Attorney Grievance Commission
Marquette Building, Suite 256
243 West Congress Street
Detroit, Michigan 48226
(313) 961-6585

Other Local Human Services Agencies

Your local FOC office may be able to provide a list of local human service organizations that can

assist you in ways that the FOC cannot.

Glossary of Frequently Used Terms

Alternative Dispute Resolution (ADR) - A process by which the parties are assisted in voluntarily reaching an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter.

Arrearage - The total amount of support payments that are overdue.

Bench Warrant - A court order to arrest a person and bring that person before the court that issued the warrant.

Domestic Relations Action - Any litigation involving divorce, paternity, custody, parenting time, or support.

Domicile - The permanent home to which a person, even when temporarily living elsewhere, always intends to return.

Evidence – Includes such things as the testimony of a witness, documents, or other items presented to a court to prove a fact.

Extraordinary Health Care Expenses - the support recipient's out-of-pocket expenses that exceed the children's ordered annual ordinary medical expense amount and any uninsured medical expense paid by the support payer.

Department of Human Services (DHS) - The state agency that provides public assistance to families. Child Protective Services and the Office of Child Support are divisions of DHS.

Friend of the Court - In this handbook, depending on the context, "friend of the court" usually means an office that assists the circuit court's family division. The office investigates, makes recommendations, and helps enforce court orders that affect minor children. "Friend of the Court" also is the formal title of the person in charge of that office.

Joint Custody - There are two types of joint custody that may exist together or be combined with another custody arrangement:

> Joint legal custody: The children live primarily with one parent, although both parents participate in major decisions affecting the children.
>
> Joint physical custody: The children live with each parent for extended periods.

Joint Meeting – An ADR process used by the FOC to resolve parenting-time complaints.

Jurisdiction - The court's power to decide cases that come before it. Whether a court has jurisdiction over a case depends on the type of case and on the parties' connections to the county where the court is located.

Motion - A formal written request that a court take a specified action. A motion is sometimes called

a petition.

Payee - The person or agency entitled to receive support payments. Payee is also known as a support recipient.

Payer - The person who must pay support. Also known as the payer or obligor.

Public Assistance - A party is considered to be on public assistance if the party receives cash assistance provided under the social welfare act, medical assistance, food assistance, or if foster care is being or was provided to a child who is the subject of the case.

Show-Cause Hearing - The court hearing at which a person must respond to a charge that he or she violated a court order. Also known as a "Contempt of Court" hearing.

Spousal Support - The money paid to support a spouse or former spouse, formerly known as "alimony."

Summons – A notice from the court that someone has initiated a case against you.

TANF - Temporary Assistance for Needy Families (TANF), a joint federal and state program formerly known as Aid to Families with Dependent Children (AFDC or ADC). In Michigan, the Financial Independence Program (FIP) is the largest program funded by TANF dollars.

Title IV-D Services - Activities to establish, enforce, account for, and collect child support in cases where a party to a domestic relations case has requested IV-D services.

Unrepresented Party - Also called "in pro per" or "pro se." A party not represented by an attorney.