

FRIEND OF THE COURT HANDBOOK

2020

**ROSCOMMON COUNTY FRIEND OF THE COURT
34TH JUDICIAL CIRCUIT**

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Chief Judge**

**Honorable Robert W. Bennett
Circuit Court Judge**

**Mark D. Jernigan
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Supreme Court Administrator Office**

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www.roscommoncounty.net
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INTRODUCTION

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

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

This handbook describes the FOC's general duties. Some 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 learn some of the common family law and FOC legal terms, please turn to the glossary at the end of this handbook.

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 *Party's Motion to Modify the Support Order.*)
- 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 and any changes **in writing** to every FOC office that has a case involving that party:
 - Current residential address.
 - A single, current mailing address where all notices and documents should be sent.
 - Current employer's (or other source of income) name, address, and telephone number.
 - Current telephone number (residential or mobile).
 - Occupational, recreational, 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.

FRIEND of the COURT DUTIES

An FOC office performs the following duties:

- When directed by the judge, the office investigates and makes recommendations to the court regarding:
 - Custody.
 - Parenting time.
 - Child support and medical support.
- 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), the FOC collects, records, and distributes support payments as ordered by the court.
- Assists the court with enforcing orders of custody, parenting time, and support.
- Provides forms that parties may use to file motions and responses regarding custody, parenting time, support, change of domicile, and repayment plans.
- Informs the parties of the availability of joint custody.

The FOC has no authority to:

- Investigate criminal activity or abuse and neglect (but its employees in their professional capacity must report abuse and neglect).
- Change an order.
- Give legal advice.

Local FOC offices work with the Office of Child Support (OCS) and the Prosecuting Attorney's (PA) office to administer certain aspects of Michigan's child support program under the child support requirements of the federal Social Security Act.

OPTING OUT OF FRIEND OF THE COURT SERVICES

Parties who agree that they do not need the FOC's services do not have to use them in certain circumstances. They may file a joint motion to opt-out, and if the court approves the motion, the parties must then deal with each other directly. Before the court approves a motion to opt-out, the parties must file a document that shows they are voluntarily giving up FOC 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 is true:

- A party qualifies 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 Title 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 the FOC opens a case, the parties may file an opt-out motion requesting the court to order the FOC to close it. 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 along with evidence that the request is against the best interests of a party or the child.
- The parties have not filed a document with the court, signed by each party, that acknowledges the FOC services that the parties are giving up.

Parties who opt-out of the FOC's services must carry out and enforce the court's order on their own. To guarantee a proper accounting of support payments and that they are considered in future proceedings, parties may make support payments through the MiSDU even after an FOC case file closes.

If at any time a party applies for public assistance, requests any service from the FOC, or requests that a case be reopened, the FOC will reopen the case. In these situations, the court may request that a party or the FOC prepare a written order to reopen the case.

COURT PROCEDURES

Starting a Case

A party who wants to start a court case must follow Michigan Court Rules and Michigan law. Many people will want to be represented by an attorney.

Plaintiff's Complaint

A case begins when a person (the plaintiff) requests the court's assistance by filing a "complaint" that asks the court to decide a dispute between the plaintiff and the other party (the defendant). The plaintiff may ask the court to do any of the following:

- Grant a divorce.
- Review the case to determine if an order for child support (including medical support) or spousal support is appropriate.
- 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 to serve the defendant with a summons and the complaint. The summons tells the defendant to answer the complaint. When minor children are involved, or if spousal support is ordered, this handbook must also be given to the defendant.

Defendant's Answer to the Complaint

The defendant has 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 both a complaint and an answer have been filed, the court usually holds a hearing to obtain the information it needs to decide the case. At the hearing, the parties may tell the court what they want it to decide. The court is not bound by parties' recommendations. Either party may file a motion asking the court to decide custody, parenting time, and support issues.

Court Orders

After the court decides the case, it must sign a written order summarizing its decision. The court may require a party or his or her attorney to prepare the order. No matter who prepares the order, it is not enforceable until a judge signs it and it is filed with the court clerk.

If a party disagrees with an order, 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 a court order by filing a grievance or by complaining to other government agencies.**

Preliminary Orders

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 hearing.

Ex Parte Orders

A judge will enter an *ex parte* order (an order entered without first hearing from all parties) when the judge believes serious harm will occur if the judge waits before issuing the order.

Ex parte orders are usually intended to keep a 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 the court changes it.

When an ex parte order involves an issue of custody, parenting time, or support, a party may file a written objection within 14 days of the order being issued. 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 forms and instructions for unrepresented parties to schedule a court hearing.

See http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/general_foc/foc61.pdf and <http://courts.mi.gov/Administration/SCAO/Forms/Pages/Domestic-Relations.aspx>.

Temporary and Final Orders

After a court decides a motion challenging an ex parte order, the court will enter a temporary order the parties must follow until it enters a final judgment (or a modified temporary order).

Only a court can change an order; the FOC cannot. Normally, a court will change an order if both parties agree to the change. Otherwise, a court will change an order only after a party (or the FOC) files a motion and the court holds a hearing on the motion.

Even if the parties agree to change a court order, the court and the FOC cannot follow the new agreement until the judge signs 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 presides over the case. The chief circuit court judge 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 only recommends a resolution to the judge.

A referee's recommendation becomes a court order if no party files a written objection with the court clerk within 21 days after the referee serves a recommendation on the parties, or (if a party objects) only after the court holds a hearing and the judge decides to approve and sign the referee's recommended order. The court may make the referee's recommended order effective temporarily – until the time to object to the order expires or until the judge holds a new hearing.

Parties may wish to 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 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 try to work out their differences and no longer wish to have the court enforce an order in their case, 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 motion asking the court to dismiss the case. If the state of Michigan provided financial assistance to the parties' children or spouse while the case is pending or the payer has other debts under the order, the payer may be required to pay any unpaid debts on the case.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

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

Check with your local FOC office to find out what types of ADR services are available. The next few sections summarize different kinds of ADR.

Friend of the Court Domestic Relations Mediation

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

Both parties must agree to have FOC mediation. 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 a court order.

FOC mediators who are employed in a professional capacity must report suspected child abuse and/or neglect. Also, FOC mediators who suspect domestic violence must report it to the proper authorities. All other 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' 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 mediation under MCR 3.216 if the parties agree, or if the judge orders mediation on a party's motion, 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. Any information they share with the mediator is confidential.

If the court orders mediation, the parties must attend the mediation sessions and they may bring their attorneys. If the parties reach agreement during mediation, the parties must sign a written agreement. The parties must then have the mediation agreement entered as a court order.

Joint Meeting

The Support and Parenting Time Enforcement Act allows the FOC to use joint meetings to resolve custody, parenting time, and support disputes.

Joint meetings occur *after* an order is entered to resolve a parenting-time complaint (usually when a parent is denied access to his or her child). Following a joint meeting, the FOC employee may recommend a court order, which the court may enter if neither party objects to it.

Some FOC offices use a form of joint meeting (usually called "conciliation") at the beginning of a case to assist the parties to reach an agreement on custody, parenting time, and support issues. If the parties cannot agree, the FOC employee may prepare a report or recommendation for the court and some courts use the report or recommendation to make a temporary order.

CUSTODY

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

Parents are encouraged to reach their own custody agreements. When parents cannot agree, the court analyzes the "best interests of the child" factors listed in the Michigan Child Custody Act at a hearing, during which the parents may present evidence and arguments about each factor.

At a parent's request, the court must consider ordering joint custody. "Joint custody" means either the child resides alternatively for specific periods with each parent, or the parents share decision-making authority for important decisions affecting the welfare of the child, or both.

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 joint custody even if neither parent requests it. A court 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, the court may appoint a guardian ad litem to represent the child. The court may require the parties to pay the guardian ad litem’s fees.

For more information about child custody issues, see *Michigan Custody Guidelines* at: <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/custodyguideline.pdf>.

Frequently Asked Questions About Custody

Can custody be changed if both parents agree?

Yes. But the judge must approve and sign a new order before it takes effect.

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 you need. Forms are at: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/custody-parentingtime/foc87.pdf>. You can also refer to Michigan Legal Help’s website for information on forms and instructions at michiganlegalhelp.org.

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 many people prefer to have an attorney represent them. The FOC cannot file a motion for you, 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 FOC do?

The FOC must:

- Offer ADR services to the parties.
- Investigate custody issues and file a report and recommendation if there has been a change in circumstances and if the judge directs, based on the “best interests of the child” factors listed in the Michigan Child Custody Act.

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

Yes. The FOC must give each party or the party’s attorney a copy of the report, including the recommendation and a summary of the information it used to make the recommendation.

Is there a cost for the custody investigation?

The FOC office may charge parties in a dispute an amount for the expense of conducting an investigation and making a report if the party requests the investigation.

What happens if the other parent does not follow the order to return the child to me?

- You can ask the FOC office to enforce the order.
- You or your attorney may file a motion and ask the court to enforce the order.
- If you believe the other parent will not 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 Department of State Office of Children’s Issues will work with the local U.S. embassy and the other country’s government to assist the lawful parent. However, the State Department cannot 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 parent file the appropriate documents with the foreign authorities. It also will monitor and report on the foreign judicial or administrative proceedings.

The Child Custody Act requires that parenting-time orders prohibit exercising parenting time in a nation that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, unless both parents provide the court with their written consent.

A parent may contact the Office of Children’s Issues at the United States Department of State at the following address:

United States Department of State
Bureau of Consular Affairs
Office of Children’s Issues, SA-29
2201 C Street, NW Washington, DC 20520

Phone: 202-501-4444 or 1-888-407-4747 (toll free)

The State Department’s website is at: Travel.State.Gov/childabduction.

Can the FOC investigate child abuse or neglect?

The FOC does not have authority to investigate abuse or neglect. However, FOC employees employed in a professional capacity are required to report suspected child abuse and neglect.

If you suspect abuse or neglect, you should contact the Child Protective Services (CPS) division of the Michigan Department of Health and Human Services (MDHHS) at 855-444-3911.

A judge may consider abuse or neglect when deciding custody or parenting time. A party should inform the FOC of any concerns about abuse or neglect if the FOC is investigating custody or parenting time. Both the judge and the FOC will rely on Child Protective Services to investigate and evaluate the abuse or neglect allegations.

May I enroll my child in my local school, even though my 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 lists factors the judge may consider to determine parenting time. [MCL 722.27a(6)(a)-(i).]

The State Court Administrative Office’s Parenting Time Guidelines are available on the Michigan Supreme Court’s website at: http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/pt_gdlns.pdf.

Some counties have guidelines that are posted at: <http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FOC/Pages/Parenting-Time-Guideline.aspx>. (Contact your local FOC office to find out about local guidelines if your county is not posted.)

In some situations, you may resolve parenting time issues and disagreements through ADR. Contact your local FOC office to determine what ADR services are available.

Enforcement

The FOC must enforce parenting time orders. The FOC office usually starts enforcement when it receives a written complaint stating facts that show a party violated the order.

The FOC may decline to enforce if:

- (1) the violation occurred more than 56 days before the complaint is made;
- (2) the complaining party previously made two or more complaints that the court found unwarranted and the complaining party has failed to pay the costs assessed in those proceedings; or
- (3) the court order does not have an enforceable parenting-time provision.

The FOC starts enforcement by sending a copy of the written complaint to the other party within 14 days after the FOC receives the complaint. The FOC may respond to the complaint by:

- Applying “makeup” parenting time.
- Asking the court to decide if the party who is accused of violating parenting time is in contempt.
- Filing a motion to modify parenting time provisions.
- Scheduling mediation, depending on the type of ADR services available in your county.
- Scheduling a joint meeting with the parties.

Modification Motions

A party may file a motion to change the parenting time order. The FOC office has forms and instructions to file this type of motion. Parties may want to hire an attorney to assist them.

Even if the parties agree to a change, the current order remains in effect until the judge signs a new order and it is filed with the court clerk.

Frequently Asked Questions About Parenting Time

My order states I have “reasonable” parenting time. What does this mean?

A ‘reasonable’ parenting time order assumes you and the other parent will agree to a parenting-time schedule.

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

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

I would like to change my parenting time schedule. What can I do?

First, ask the other parent to agree to a change. Remember that the agreement, by itself, is not enforceable; it must first be changed into a new court order.

If no agreement is possible, you may file a motion asking the court to order a new schedule. You may file the motion on your own, or have an attorney file it for you.

The forms to change your parenting time are at:

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/foc65.pdf>.

The other parent is not paying child support. Do I have to allow parenting time?

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

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

The FOC can only enforce the court’s orders. If your court order does not say anything about transferring clothes or other items, try to work it out with the other parent. If that is unsuccessful, you may file a motion requesting a new order to require the other parent to transfer clothes or other items along with your child.

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

File a written complaint with the FOC (see *Parenting Time Enforcement*). Your complaint should state facts explaining how the other parent is not following the order. Some FOCs have a form to file a parenting time complaint. Contact your local FOC 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 parenting time?

If you do not follow the court order, the court may order you to explain your decision to the court at a hearing to decide whether you are in contempt of court. At the hearing, you can explain why your decision was in the best interests of the children. If the judge agrees, you will not be held in contempt.

The other parent will not let me telephone, e-mail, or text 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, e-mails, or texting, try to negotiate an agreement with the other parent. You can also ask your FOC office how to proceed. You also may file a motion asking the court to modify the order to require that you be allowed to call, e-mail, or text your children.

I think my child is being abused during parenting time. What should I do?

Report your concerns to the MDHHS Children's Protective Services (CPS) at 1-855-444-3911. In Wayne County, call 800-716-2234.

The FOC cannot investigate abuse or neglect allegations, nor can it remove children from a person; only CPS can do that.

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 you, your child, and/or suggest that the other parent does the same.
- Contact the FOC and request alternative dispute resolution.
- 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

The Office of Child Support, the prosecuting attorney's office, and the friend of the court offices work together with both parents to establish and enforce child support orders.

A "support order" is any court order for a party to pay:

- Child support.

- Spousal support (formerly called “alimony”).
- Medical, dental, and other health care expenses for the child(ren).
- Confinement/birthing expenses.
- Child care expenses.
- Educational expenses.

All support orders state an amount 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 starts after the first day of a month, support is prorated for the partial month. Support will end on the last day of the month stated in the order.

Changing a Child Support Order

The FOC must review child support orders automatically once every 36 months if the child or the parent receives public assistance. In other cases, the FOC conducts a review on a party’s written request, but not more often than once every 36 months, unless the party proves a substantial change in circumstances. The court can also order the FOC to review support. After reviewing the support, the FOC will ask the court to change the order if a change is warranted. As part of its review, the FOC may request information such as a parent’s earnings, details of any health care coverage, tax refunds, and job or education history.

Threshold for a Friend of the Court Motion to Modify the Support Order

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

Party’s Motion to Modify the Support Order

Merely notifying the FOC that one parent’s financial situation has changed cannot automatically change the child support amount. A party who needs an immediate change in child support should file a court motion requesting the change. Forms to file a motion are at: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/support/foc50.pdf>. The FOC provides forms and instructions for this type of motion without the assistance of an attorney, but the FOC cannot complete the motion for the party. A party may also hire an attorney to file a modification motion.

Retroactive Modification of Support Generally Not Allowed: Exception

A change in child support generally cannot apply to any time before the date that the motion for a change was filed unless a party intentionally fails to report an income change to the FOC or has misrepresented his or her income.

CHILD SUPPORT FORMULA

Federal and state law requires the court to use a formula to set child support. 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 amount 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.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA24-Text.pdf>.

The Michigan Child Support Formula is online at the Michigan Supreme Court's website: <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2017MCSF.pdf>.

Payment Procedure

Unless otherwise ordered, support payers must make their payments to the Michigan State Disbursement Unit (MiSDU). When the MiSDU receives a payment for an order, the MiSDU must forward the money to the payee within two business days.

In most cases, the FOC automatically withholds support from a payer's wages or other income. A payer who pays the MiSDU directly should clearly identify the case number with the payment.

Once a year, parties may request the FOC to give them a free support account statement. Account information is always available through the MiSDU or online through MiChildSupport at micase.state.mi.us, or by calling the FOC office that has the support order. You can reach MiSDU at 877-543-2660.

Statutory Service Fees

Michigan law requires the FOC to charge support payers a \$3.50 per month fee.

Surcharge on Overdue Support (Arrears)

Some overdue support cases have surcharges. Before 2011, surcharges were automatic. Those surcharges are still enforceable. As of January 1, 2011, automatic surcharges stopped but the court can 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 enforce them without waiting for a request for enforcement. Some enforcement begins immediately, including income withholding and health insurance coverage.

SUPPORT ENFORCEMENT

The FOC has several ways to collect support. They include:

Immediate Income Withholding

As soon as a support order enters, the FOC can have the support payer's employer (or other income source such as social security, unemployment compensation, or workers' compensation) withhold the support from the payer's income and send it to the MiSDU. The source of income may charge the payer a fee. The FOC can adjust income withholding (usually by increasing) to pay arrears on the case. The FOC office must first send the payer a notice of arrearage so the payer can ask for a hearing on the arrearage payment amount. Income withholding cannot exceed 50 percent of the payer's disposable earnings.

Support orders must provide for immediate income withholding unless the court does the following:

- Makes a written finding that income withholding is not in the child's best interests.

- Finds all previously ordered support has been paid on time.
- Requires the payer to keep the FOC informed of the payer's source of income's name, address, and telephone number, and information about any health care coverage the payer maintains or the payer's employer offers.

Contempt of Court (Show Cause Hearing)

The FOC or a party may begin a civil contempt action against the payer who does not timely pay support. The payer must appear in court and “show cause” why the court should not find the payer “in contempt of court.” The court may issue a warrant to arrest a payer who fails to attend a contempt hearing. The court may order any of the following for a person who is in contempt of court: a fine up to \$100.00; a suspended license; participation in a work activity or community corrections program; FOC supervision, lump sum or other payments; and/or a jail sentence of up to 45 days (90 days for a second offense) until the payer makes a payment.

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

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/fo cb/PSA25-Text.pdf>.

Income Tax Intercept

The FOC may collect support from a payer's income tax refunds. The payer must owe at least \$150 in past-due support to the state, or \$500 in past-due support to the family for federal tax offsets and \$150 (to the state or the family) for state tax offsets.

Federal tax refunds first pay any past-due child support owed to the state. This is because the family is currently receiving cash assistance, or has received cash assistance in the past. If the family never received cash assistance, or there is no past-due support owed to the state, then all collections from federal tax refunds pay past-due support owed to the family.

For more tax intercept information, see *Tax Refund Offset Program* (PSA 13) at:

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/fo cb/PSA13-Text.pdf>.

Criminal Nonpayment of Support

Failure to pay child support is a federal and state crime. The FOC does not bring felony charges. Michigan law is prosecuted by county prosecutors or the Attorney General. Federal law is prosecuted by the United States Attorney's office.

Passport Suspension/Denial

Passport applications may be denied if the paying parent is at least \$2,500 past due and is not making payments agreed upon in a payment plan.

Drivers and Recreational License Suspension

The county may suspend driver's licenses, occupational licenses, and recreational/sporting licenses of parents who are at least two months behind in paying their child support, are not making payments agreed upon in a payment plan, or fail to appear for a contempt hearing. An

occupational license is required for some jobs (for example, electricians, realtors, barbers, plumbers). Recreational and sporting licenses include hunting, fur harvesting, or noncommercial fishing licenses.

Liens on Real Property

If a parent is more than two months behind in child support payments, the FOC can place a lien on the payer's property. That property can be sold to pay the past-due child support. Liens restrict the property owner's ability to transfer property until the debt has been paid.

Credit Reporting

Lenders often obtain a person's credit report to decide whether to approve a loan or other credit to the person. If the credit report shows untimely support payments or a large past-due amount, the lender may deny the person a loan or other credit.

For more information about enforcement remedies, see: Friend of the Court Enforcement of Domestic Relations Orders (PSA 27) at: <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA27-Text.pdf> and Information about Using Liens to Obtain Past Due Support (PSA 23) at: <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA23-Text.pdf>.

Health Care Enforcement

The court may order one or both parents to provide health insurance for the children. If a parent disobeys a court order for the parent to obtain health insurance from an employer, the FOC will send a medical support notice to the parent's employer. The employer then must enroll the children in the employer's plan and deduct the premiums from the parent's wages.

Court orders require the parents to reimburse each other for part of their children's uninsured health expenses. If a parent fails to pay his or her share, the FOC will help collect it if the following four conditions are satisfied:

- (1) The amount exceeds the annual ordinary amount in the order, or the requesting parent is the support payer.
- (2) One parent requests payment from the other parent within 28 days after receiving an insurer's determination that an expense is not covered.
- (3) The other parent does not pay within 28 days of the request for payment.
- (4) 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 fails to pay as required.

If a parent submits a request to the FOC that meets those four requirements, the FOC will notify the other parent of the amount due. If the parent does not object within 21 days, the unpaid amount becomes a support arrearage subject to enforcement. If the parent objects, the FOC must schedule a hearing to decide how to pay the amount that the health insurer did not pay.

If the court does not order health insurance, coverage might be available through MI-Child or Medicaid programs. Find more information about Medicaid programs online at: http://www.michigan.gov/MDHHS/0,5885,7-339-71547_4860_78446.

Intergovernmental Cases

An intergovernmental case is where the child and a parent live in different states, countries, or Tribal nations.

The obligation to pay child support does not end when a party no longer lives in Michigan. Both parents must notify the FOC whenever they relocate. The support payer must continue to pay support, and the FOC must continue to enforce the court order.

If a support payer no longer resides in Michigan and stops paying, other states (and some foreign countries) may enforce the Michigan courts' orders. Every state passed the Uniform Interstate Family Support Act (UIFSA) that allows a court in another state to withhold the payer's income, enforce the order, set or modify a support order, or help find the payer's assets. Several other countries have agreed to work together in child support matters.

Under UIFSA, the state that issues the original order is the only state that can change the order as long as one of the parties or a child still lives there. If no party or child still lives in the state that issued the order, the person who wants it changed must ask the state where the other parent lives to change it.

For more information, see *The Uniform Interstate Family Support Act* (UIFSA) (PSA 29) located at:

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA29-Text.pdf>.

Frequently Asked Questions about Support Orders and Payments

What is child support?

Child support is money a parent pays to help meet the child's needs when the parent is not living full-time with the child. The court may order support in a(n):

- Divorce.
- Paternity action.
- Child custody action.
- Family support action.
- Intergovernmental action.

Who can receive child support?

A person can receive child support if all of the following apply:

- (S)he is the minor child's parent or has responsibility for a minor child.
- The minor child lives in the person's home.
- The child is financially dependent on that person.
- One or both of the child's parents do not live with the child.

- The court has ordered a child support payment.

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.

How do I get an order for child support?

A party must first file a complaint asking the court to 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 the judge signs that agreement (on a Uniform Support Order), 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.

You may visit MDHHS's website for more information on how to get a child support order at http://www.michigan.gov/MDHHS/0,5885,7-339-73971_5528_61204_41277---,00.html or http://www.michigan.gov/MDHHS/0,5885,7-339-73971_5528_61204_61828---,00.html.

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 graduating, 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 include 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. Parenting time and child support 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 help if the other parent is more than one month behind on the support payments. You may also hire an attorney.

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

No. A payer who pays the other party directly will not receive credit for the payments.

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

No. The law does not let the FOC investigate how support payees spend child support. The court may change custody if you can show that the other party neglected the children.

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

The FOC is required to review the order within 14 days of receiving notice that a parent has been incarcerated or released from incarceration, and recommend any necessary support changes.

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

If you comply 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 fee to the Clerk of Court.

Who do I contact for more information?

For general child support information online, visit the Michigan Child Support website at: http://www.michigan.gov/MDHHS/0,5885,7-339-73971_5528---,00.html.

If you have questions regarding paternity, contact your local prosecutor's office.

Direct questions regarding your case to your local FOC office. Phone numbers for local FOC offices are at <http://courts.mi.gov/self-help/directories/pages/trial-court-directory.aspx>.

The State Court Administrative Office, Friend of the Court Bureau, phone: 517-373-5975, can answer judicial process questions.

THE FEDERAL IV-D CHILD SUPPORT PROGRAM

THE FEDERAL IV-D CHILD SUPPORT PROGRAM

Title Four, Part D of the Social Security Act (IV-D), establishes the federal child support program. IV-D sets requirements all states must meet to receive federal funding to find missing parents and their assets and to help parents establish paternity and child support. IV-D also: provides funding to help parents change orders when appropriate; enforce child support and orders; works with other states to enforce support; and collects and processes child support payments.

Applying for IV-D Child Support Services. Persons who want to establish paternity or support, or collect child support may apply for IV-D child support services. A person may call the Office of Child Support, or visit a local MDHHS office, prosecuting attorney's office, or friend of the court office to obtain an application. You can apply online at <https://micase.state.mi.us>. Parents who are not receiving public assistance may also sign up for IV-D services by using the form at http://www.michigan.gov/documents/DHS-1201_136519_7.pdf.

All IV-D applicants are entitled to receive ***Understanding Child Support: A Handbook for Parents***. You may view the MiDHHS handbook online at: http://www.michigan.gov/documents/dhs/DHS-PUB-748_209001_7.pdf, or contact your local FOC or MiDHHS office for a paper copy.

If you would like more information regarding the application process or establishment of a support case, contact the Office of Child Support at 866-540-0008.

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?

A party who has joint custody with the other parent and does not already live 100 miles from the other parent and wishes to relocate over 100 miles away, may sign an agreement with the other parent to change residence. The agreement must be in the form of an order. If you and the other parent cannot agree, you may:

- Use the FOC's ADR services; or
- File a motion that asks the court to enter an order approving the change.

Notifying 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?

Only a written order is valid. 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 my divorce judgment's property settlement provisions?

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

ACCESS TO FRIEND OF THE COURT RECORDS

May I review my FOC file?

Parties and their attorneys can see most 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 allow you to see the file. *See* MCR 3.218 (G).

May other persons see my FOC file?

An FOC file is not public information. However, MCR 3.218 (B)-(F) allows certain individuals or agencies access to FOC files.

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 including 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 can sign an order stopping support. You should provide copies of adoption orders, marriage records, or military service records to the court, and pay any overdue support.

PARENT LOCATOR

Will the FOC help locate a missing parent?

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

- To collect child support;
- To obtain or enforce a child custody or parenting time order;
- To enforce state or federal law prohibiting the unlawful taking or restraint of a child.

PATERNITY ESTABLISHMENT

How do I establish my child's paternity (father)?

A father may establish his paternity by signing an acknowledgement of parentage or by entering a court order. The Michigan Department of Health and Human Services (MDHHS) and the Prosecuting Attorney's (PA) Office work together to establish paternity. For more information regarding paternity establishment, please visit:

<http://courts.mi.gov/Self-help/center/casetype/Pages/Paternity.aspx>.

COMPLAINTS ABOUT ATTORNEYS, JUDGES, OR THE FRIEND OF THE COURT

How do I file a complaint about the FOC?

The Friend of the Court Act has a grievance process for parties to use to express concerns about an FOC office's operations or employees. A grievance cannot change the FOC's recommendation, a referee's recommendation, or a judge's decision.

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: Administration/SCAO/Forms/courtforms/domesticrelations/generalfoc/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 (but not FOC employees) with a Citizen Advisory Committee (CAC). Each county may appoint a CAC. Because the committee's role is advisory, the meeting will be closed to the public. After the committee or subcommittee meets, it reports its findings to the chief judge and the county board of commissioners. To find out if your county has an active CAC, please contact your local FOC.

How do I report misconduct of a judge or referee?

The Judicial Tenure Commission (JTC) reviews allegations of judge or referee misconduct. 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 it cannot change a court order or a referee's recommendation. A party must either seek rehearing by the same court or file an appeal to change a court's decision.

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
www.jtc.courts.mi.gov

How do I file a complaint about an attorney?

The Attorney Grievance Commission investigates attorney misconduct. To file a complaint against your attorney (called a "request for investigation"), contact:

Attorney Grievance Commission
Buhl Building
535 Griswold, Suite 1700
Detroit, MI 48226
313-961-6585
www.agcmi.org

GLOSSARY OF FREQUENTLY USED TERMS

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.

Child Support – The court-ordered payment of money for a child. Support may include medical, dental and other health care expenses, child care expenses, and educational expenses. Child support can include child care expenses when the child is less than 12 years old.

Contempt of Court – Failure to do what the court orders without a reasonable cause.

Disbursement – Paying out of collected child support funds.

Domestic Relations Action – Divorce, paternity, custody, parenting time, or support cases.

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

Additional (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.

Michigan Department of Health and Human Services (MDHHS) – The state agency that provides public assistance to families and Child Protective Services.

Friend of the Court – In this handbook, “friend of the court” means the 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.

Motion – A formal written request that a court take a specified action. A motion is sometimes called a “petition.”

Paternity – Fatherhood; a legal father for a child.

Payee – The person or agency entitled to receive support payments (also known as “recipient”).

Payer – The person who must pay support (also known as the “obligor”).

Public Assistance – Cash assistance (FIP) provided under the social welfare act, medical assistance, child daycare (CDC), food assistance (FAP) to a parent, or if foster care is or was provided to a child who is the subject of the case.

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

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 – Money paid to support a spouse or former spouse, (formerly called “alimony”).

Summons – A notice from the court that someone has sued you.

STATE AND LOCAL AGENCIES

Your FOC office may have a list of local human service organizations that can help you in ways that the FOC cannot. The list of agencies below may be able to assist you with your questions.

Michigan Department of Health and Human Services (MDHHS)

235 S. Grand Ave., P.O. Box 30037

Lansing, Michigan 48909

<http://www.michigan.gov/MDHHS>

Cash, Food, Medical or Home and Burial Assistance

1-855-275-6424 (1-855-ASK-MICH)

Reporting Abuse/Neglect

1-855-444-3911

Domestic Violence Hotline

1-800-799-7233

Office of Child Support

1-866-540-0008

(Automated System)

MiChildSupport (24-hour case access)

<https://micase.state.mi.us>

Michigan State Disbursement Unit (MiSDU)

P.O. Box 30351

Lansing, Michigan 48909

<https://www.misdu.com>

Michigan Legal Help

<http://michiganlegalhelp.org>