

Model Friend of the Court Handbook

Friend of the Court Bureau/SCAO
Michigan Supreme Court

To view this publication and other publications electronically, please visit:

<http://www.courts.michigan.gov/scao>

June 2004

TABLE OF CONTENTS

Introduction..... 1

Parties’ Rights and Responsibilities..... 2

Friend of the Court Duties 2

Court Procedures..... 4

Hearings 5

Court Orders..... 5

Alternative Dispute Resolution..... 7

Information About Custody, Parenting Time, and Support Payments..... 8

Custody 8

Parenting Time..... 10

Support..... 13

Miscellaneous Issues..... 17

Complaints about Attorneys, Judges, or the Friend of the Court..... 19

Other Local Human Services Agencies 20

Glossary of Frequently Used Terms 20

INTRODUCTION

This handbook summarizes the friend of the court's duties and procedures in domestic relations cases, the parties' rights and responsibilities, and some basic court procedures.

The family division of the circuit court hears and decides domestic relations cases and other family law cases. Those cases include divorce, paternity, and custody matters, plus some other family-centered disputes. The friend of the court office is part of the family division and is supervised by the division's chief judge. The friend of the court assists the court and the parties in domestic relations cases that involve minor children.

Family disputes are stressful for parents and their children. Parents can help 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 need both of their parents. When parents cooperate, they lay a solid foundation for their new parental relationships and responsibilities. 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. They want to be able to say that, despite how Mom and Dad may have felt about one another, they always treated each other with courtesy and respect and never put their children in the middle of their dispute.

We in the friend of the court office will do our best to handle your case quickly and fairly. To help us do that, please follow the suggestions in this handbook.

PARTIES' RIGHTS AND RESPONSIBILITIES

Each party has the right to:

- Request a meeting with the friend of the court employee who is investigating that person's dispute about custody, parenting time, or support.
- Ask the friend of the court to recommend that an order for support or health insurance be modified. *See Support Modification Actions Started by Parties, page 16.*
- Expect the friend of the court office to perform its duties under Michigan statutes and court rules.
- Expect the friend of the court to explain its policies and procedures.
- Be treated fairly and courteously by friend of the court employees.
- File a grievance with the friend of the court office concerning an individual employee or a general office procedure.
- Hire and consult with an attorney.
- Decline all assistance from friend of the court (opt out) -- if both parties agree and the court approves.

Each party has the responsibility to:

- Provide the following information *in writing* to *every* friend of the court office with a case for that party:
 - current residential and mailing addresses.
 - current employer's (or other source of income) name, address, and telephone number.
 - current telephone number.
 - occupational or driver's licenses held, and the driver's license number.
 - social security number, unless exempt by law from disclosing that number.
 - current residence 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 friend of the court carry out its duties.
- Obey all court orders.
- Keep friend of the court appointments.
- Treat the friend of the court courteously.

FRIEND OF THE COURT DUTIES

Michigan law created the friend of the court system in 1919. At least one friend of the court office serves each circuit court's family division. The friend of the court has the following duties:

- When a child's parents cannot agree, or when directed by the judge, to conduct an investigation and to make recommendations to the court regarding:

- Custody.
 - Parenting time.
 - Child support, medical support, and sometimes spousal support.
- To offer voluntary mediation services to help settle disagreements about custody or parenting time.
 - In cooperation with the Michigan State Disbursement Unit (MiSDU), to collect, record, and distribute support payments as ordered by the court.
 - To help the court and the parties enforce orders for custody, parenting time, and support.

The friend of the court has no authority to do the following:

- 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 friend of the court offices administer all aspects of Michigan’s child support program. The Office of Child Support is part of the Michigan Family Independence Agency. OCS administers the child support requirements of the federal Social Security Act.

OCS also coordinates efforts to find absent parents, oversees the Michigan State Disbursement Unit (MiSDU), and manages income tax intercepts and certain other enforcement remedies.

This handbook describes the general duties of the friend of the court. Some specific procedures vary by county. You may discuss any questions regarding local or state-wide procedures or requirements with your local friend of the court or with your attorney.

To become familiar with some family-law and friend of the court legal terms, please refer to the glossary that begins on page 20.

Opting Out Of All Services Offered by the Friend of the Court

Parties who agree that they do not need the friend of the court’s services do not have to use them. They may file a joint motion to “opt out” and, if the court approves, they may deal with each other directly instead of using the friend of the court as an intermediary. Before the court may approve a motion to opt out, the parties must sign and file a document that summarizes the friend of the court’s services and acknowledges that the parties have chosen not to use those services.

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

- A party is eligible for (Social Security Act) Title IV-D services because the party is receiving or has applied for public assistance.
- A party has applied for IV-D services.
- A party has asked the friend of the court to open a case file.

- There is evidence of domestic violence or bargaining inequality coupled with evidence that the opt-out request is against the best interests of a party or the parties' child.

Even after the court case has been started and the friend of the court has opened a case file, the parties may file an opt-out motion requesting the court to order the friend of the court 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 previous 12 months a support arrearage has existed or a custody or parenting time violation has occurred.
- Within the previous 12 months a party has asked the friend of the court 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 parties' child.

Parties who “opt out” must assume full responsibility 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 a friend of the court case file is closed.

At any time, a party can cause the friend of the court office to reopen its case file by applying for public assistance or by requesting any service from the friend of the court.

COURT PROCEDURES

Starting a Case

No court can require a party to use an attorney. However, anyone who wants to start a court case must follow the Michigan Court Rules and most cases involve difficult legal and factual questions. Therefore, most people 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” or a similar legal document 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 party to pay child 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 defendant must be given 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 being requested, a friend of the court informational handbook (this handbook or one like it) must be given to the defendant along with

the summons and complaint.

Defendant's Answer to the Complaint

The defendant usually 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 or the friend of the court may file a motion asking the court to decide the custody, parenting time, and child support issues. The court usually holds a hearing to get the information it needs to decide those issues.

Both parties must be notified of the time and place of a hearing. This advance notice gives the parties an opportunity to appear at the hearing and tell the judge or referee what they think the court should do.

COURT ORDERS

When a court makes a decision, it must sign a written order summarizing the decision. Someone must prepare the order. That usually is done by one of the attorneys, but sometimes the judge drafts the order. Either way, an order is not enforceable until a judge signs it and someone files the signed order 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 you disagree with an order and want to challenge it, your options include filing a motion for a rehearing (by the judge who issued the order) or filing an appeal (to a higher court). You cannot change an 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 later hearing. This often happens in divorce cases.

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

A judge will enter an ex parte order when the judge believes that serious harm will occur if the judge delays acting until the opposing party has the opportunity to speak with the judge. 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. Even if an objection or motion is filed, 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 friend of the court will try to help the parties settle the dispute without going to court. If no agreement can be reached, the friend of the court will provide the forms and instructions that a party will need to schedule a court hearing.

Temporary and Final Orders

After the court decides a motion challenging an ex parte order, it will enter a temporary order that establishes requirements that the parties must follow until a final judgment order (or sometimes a modified temporary order) is entered.

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

The parties' agreement to change a previous court order will be recognized by the court and the friend of the court only after the judge signs and enters a new order that approves the agreement. Merely telling or writing to tell a friend of the court employee or a Family Independence Agency worker that the parties have agreed to something cannot change the court's previous order.

Sometimes, the law requires the friend of the court to ask the court to change an order. (See Parenting Time Enforcement on page 11 and Modification of a Support Order on page 16).

Referee Decisions

A referee is a person who holds hearings, examines witnesses, and makes recommendations to a judge. The chief judge of a circuit court may appoint a referee to hear testimony and arguments on any domestic relations issue, except spousal support (alimony).

A referee hearing differs from a hearing before a judge. 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) the court holds a hearing and the judge then signs an order approving the referee's recommendation.

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

You should consult an attorney for more information on how to object to a referee's recommendation and request a hearing before a judge. Also, some friend of the court offices will provide written instructions that explain how to file an objection.

Reconciliations and Dismissals

Not every domestic relations case ends with the parents divorced or separated. If the parents 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 on a case, they must file a proposed order of dismissal with the court and provide a copy to the friend of the court. In that situation, when the state of Michigan has provided TANF (temporary assistance to needy families) aid to the parties' children and the custodial parent while the case was pending, the support payer must pay any previously-ordered child or spousal support to the state of Michigan. This reimbursement may be less than the previous TANF payments, and it cannot be more. The exact support amount will depend on how much support the court's order required. Finally, 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 parent leaves Michigan, even if it is the custodial parent and the parties' children who move. Both parents must tell the friend of the court 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 the “Uniform Interstate Family Support Act (UIFSA).”

UIFSA helps states deal with cases where a party either lives or earns income in another state. Under UIFSA, one state establishes or modifies the support requirement, and the other states help enforce that first state’s order. The enforcement procedures under UIFSA include having an employer in another state withhold the payer’s income, having the other state enforce the order, and having the other state 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/services/focb/focb.htm> .

ALTERNATIVE DISPUTE RESOLUTION

When parties go to court, the judge makes decisions affecting the family. If you are a party to a domestic relations case, you are encouraged to participate in alternative dispute resolution (ADR), which may allow you to settle your case without further court proceedings. In addition to parents, ADR may involve grandparents and other third parties.

Mediation is the most common type of ADR. Mediation 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 next few sections summarize the kinds of alternative dispute resolution that are available in domestic relations cases. Contact an attorney or the friend of the court to determine which methods are available in your area.

Friend of the Court Domestic Relations Mediation

The friend of the court offers mediation services to help parents resolve custody and parenting time disputes. Those are the only two issues that the friend of the court is allowed to mediate. In most cases, the friend of the court does not charge anything for providing mediation services.

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

Matters discussed during mediation are confidential. A friend of the court 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 non-binding 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 friend of the court mediation summarized earlier, court-rule mediation is not necessarily voluntary and is not limited to only custody and 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.

Once ordered, 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 privileged. The mediator may not disclose this information to anyone.

If the parties reach an 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 an 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.

Arbitration

In some counties, parties may agree to resolve their dispute by arbitration (sometimes called binding mediation). The arbitration may be conducted by one person or a multi-person panel. The arbitrator will consider the parties' arguments and may hear testimony from witnesses. If, in the end, the parties still cannot agree on how to resolve the issues, the arbitrator will make the decision and the parties must accept that decision.

A court may overrule ("vacate") an arbitrator's decision only in exceptional circumstances. That can happen if the court finds that the arbitrator exceeded his or her powers, wrongly refused to hear evidence, or was biased. It is very rare for a court to vacate an arbitrator's decision. If the arbitrator's decision is not vacated, the court will enforce the decision as if it were the court's own.

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's medical treatment, education, and religious instruction. 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 factors listed in the Michigan Child Custody Act. Those "best interests of the child" 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, then 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 on the record its reasons for granting or denying the request for joint custody.

The court also may consider ordering joint custody even if neither parent has requested it.

Besides the standard “best interests” factors that must be considered before making any custody decision, a judge who is considering ordering joint custody must also consider 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 best interests are not adequately represented in the custody proceedings, the court may appoint a lawyer-guardian ad litem to represent the child in the court proceedings. If they have the ability to pay, the court may require the parties to pay the lawyer-guardian ad litem’s fees.

CUSTODY QUESTIONS AND ANSWERS

Can a custody order be changed if both parents agree?

If both parents agree on a proposed change, they may sign an agreement (“stipulation for entry of a consent order”) and request the judge’s approval. If the judge signs the proposed consent order, it will then become the new custody order.

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

You may file the motion on your own, and the friend of the court will provide the forms and instructions that you will need. However, 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 friend of the court cannot file a motion for you, nor can that office provide you with an attorney or tell you what to say in the motion.

Can the friend of the court assist parties in reaching an agreement regarding custody?

Yes. The friend of the court provides domestic relations mediation when there is a custody dispute and both parties agree to participate in mediation. (See Alternative Dispute Resolution on page 7).

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 friend of the court must:

- Offer mediation services to the parties.
- If the judge directs, investigate the custody issue and file a written report and recommendation based upon the “best interests of the child” factors listed in the Michigan Child Custody Act.

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

Upon request, and before the court acts on the recommendation, the friend of the court 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.

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 friend of the court office and request that it enforce the order.
- You may contact your attorney.
- 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 U.S. citizen is illegally kept outside of this country, the U.S. 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.

How do I contact the Office of Children's Issues at the U.S. Department of State?

You can write to: Office of Children's Issues; Overseas Citizens Services; Department of State 2201 C Street, NW; Room 4817; Washington, DC 20520-4818.

You also may call 1-888-407-4747, fax 202-736-9133, or go to the State Department's internet website for foreign travel at <http://travel.state.gov> .

Is the friend of the court allowed to investigate child abuse or neglect?

No, the friend of the court does not have that authority. Abuse or neglect should be reported in the county where the custodial parent and children live to Protective Services, a special unit within the Family Independence Agency (FIA).

A judge will consider allegations of abuse or neglect when making a decision on custody or parenting time. The friend of the court office has a duty, when ordered by the court, to conduct a custody or parenting time investigation. Concerns about abuse or neglect should be disclosed to the friend of the court during this type of investigation. However, both the judge and the friend of the court will rely on FIA 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. When a child regularly resides in two school districts, which often happens when the parents have true joint custody, the child may attend school in either or both districts.

PARENTING TIME

A parenting time order states when a child will spend time with each parent. During parenting time, that parent is responsible for all routine decisions affecting the child. The Michigan Child Custody Act states:

"[Normally,] 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)

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

Parenting time guidelines are posted on the Michigan Supreme Court's website at: <http://www.courts.mi.gov/scao/services/focb/focb.htm> .

Parenting Time Enforcement by the friend of the court

The friend of the court is required to enforce parenting time orders.

The office usually will initiate enforcement when it receives a written complaint stating specific facts that show a violation of an order governing custody or parenting time. However, the friend of the court may decline to respond if (1) the alleged violation occurred more than 56 days before the complaint is made, or (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.

The friend of the court starts enforcement proceedings by sending a copy of the written complaint to the accused party within 14 days after the office receives the complaint. If it finds that the court's order has been violated, the friend of the court may suggest "makeup" parenting time, start an action requiring the party to show cause why the court should not find the party in contempt of its order, file a motion for modification of existing parenting time provisions, schedule mediation, or schedule a joint meeting with the parties.

Parenting Time Modification Motions

A party may file a motion for a change in the parenting time order. The friend of the court office has printed forms and instructions for filing this type of motion. Most parties will improve their chances of success by hiring an attorney to assist them with parenting time motions.

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. It is important to remember that, 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 county clerk.

PARENTING TIME QUESTIONS AND ANSWERS

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

An order that grants "reasonable" parenting time allows you and the other parent to negotiate a parenting time schedule that is convenient for both of you. Parents may agree to almost any schedule that is consistent with the best interests of each child and the overall family situation.

If you and the other parent cannot agree on a "reasonable" schedule of parenting time, you have the following options:

- Ask the other parent to agree to attend a joint meeting with the friend of the court, to participate in mediation, or to seek counseling, (either with you or separately). With help from one of those neutral parties, you and the other parent may be able to agree on a parenting time schedule.
- Ask the friend of the court to file a motion to have the court change your order to require a specific schedule for parenting time.
- File a motion on your own or contact an attorney.

My order lays out a specific parenting time schedule. I would like to change that schedule. What can I do?

First, ask the other parent to agree to a change. If you both agree, the proposed change and reasons for it may be presented to the court as a proposed new court order. The judge almost always will 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 the parents cannot agree on the changes, either may ask the friend of the court to mediate their negotiations. The friend of the court will provide mediation services if both parents agree to participate.

If no agreement is possible, 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 friend of the court to enforce the child support provisions. (See Enforcement Methods on page 14).

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

The friend of the court 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 directly or with help, such as friend of the court mediation. 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 friend of the court. (See Parenting Time Enforcement on page 11).

If I think 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. That 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 friend of the court do?

The friend of the court can only enforce the written orders of the court. If your court order does not provide for telephone calls, try to negotiate an agreement with the other parent. You may request friend of the court mediation or other methods of resolution. If that is unsuccessful, you may file a motion asking the court to modify the order's parenting time provisions to require that you be allowed to call your children.

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

Report your concerns to the Protective Services unit of the Family Independence Agency in the county where the custodial parent and children live. The friend of the court office does not have the authority to investigate abuse or neglect allegations. Nor can it remove children from the home of a person who commits or allows mistreatment. Only Protective Services can take those actions.

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 options:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, or the other parent.
- Contact the friend of the court 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 friend of the court do?

The friend of the court 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” is any court order that requires a parent or ex-spouse to pay:

- Child support.
- Spousal support (formerly called “alimony”).
- Medical, dental, and other health care expenses.
- Confinement expenses (the mother’s birthing 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 (or ends on a day other than the last day of the month), the support amount must be prorated for the partial month.

Support Investigations and Reports

The friend of the court is required to periodically review an order’s child support provisions, including health care. The friend of the court will file a motion to modify the order if a change is warranted (See Modification of a Support Order on page 16). As part of this periodic support review, the friend of the court may request information from a parent’s employer. That includes things like the parent’s address, social security number, date of birth, earnings, and the details of any dependent health care coverage that is available as a benefit of employment.

Whenever a court directs, in addition to the periodic reviews summarized above, the friend of the court will evaluate the current orders’ support provisions and submit a written report and recommendation to the parents (or their attorneys) and the judge.

Child Support Formula

Michigan law requires a standard child support formula to be used in almost all cases to determine how much child support a parent must pay. That standard formula considers the parents’ incomes, how many children they have, and other factors. The court may set a support amount that differs from the formula number, but only if the friend of the court or the judge first calculates the amount required by the formula and then 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).

More information and a computer program for calculating support using the formula is available on the Michigan Supreme Court’s website. (<http://www.courts.michigan.gov/scao/services/focb.htm>).

Support Payment Procedure

Unless otherwise ordered, support payers must make their payments to the friend of the court or the State Disbursement Unit (SDU). Payments received by a friend of the court will be forwarded to the MiSDU.

When a payment received by the SDU sufficiently identifies the person to whom the support should be paid, the SDU will forward the money to the recipient within two business days.

In most cases, support payments are automatically withheld from a payer’s wages. If you pay MiSDU directly, please write your case number on your check. Do not send cash through the mail.

Once a year, on written request, the friend of the court will give the parties a free statement of their support account.

Statutory Service Fees

Michigan law requires the friend of the court to charge the support payer an annual service fee, currently \$42 per year.

Surcharge on Overdue Support

Until July 1, 2004, Michigan law requires the friend of the court to add a surcharge of 8% (annual rate) to support payments that are past due. The prorated surcharge is added on January 1 and July 1 each year. Effective July 1, 2004, the surcharge will be adjusted periodically to match the interest rate on court judgments for money damages. The surcharge goes to the support recipient.

Automatic Support Enforcement

When support payments are more than a month past due, the friend of the court must begin enforcement action without waiting for a request for enforcement.

Enforcement Methods

The friend of the court has several methods of collecting past due support. They include:

- **Immediate Income Withholding**

The friend of the court 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 Michigan State Disbursement Unit. The payer will be notified before the income withholding starts. The payer has a right to challenge the income withholding at an administrative hearing.

Most support orders entered or changed after December 31, 1990, must provide for income withholding even without a showing that the support payer has missed payments or is likely to do so.

A judge who does not want to require income withholding must find "good cause" for departing from the general rule. Good cause exists when:

EITHER

- The court makes a specific written finding that income withholding is not in the best interests of the child; AND
- All previously ordered support has been paid on time; AND
- The payer agrees to keep the friend of the court 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 offered by the payer's employer or coverage that the payer purchases directly from a health insurer.

OR

- Both parties and the court agree that 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 friend of the court 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 friend of the court 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.” For more information about show cause proceedings, see “Show Cause Proceedings in Domestic Relations Cases” (PSA 25).

- **Income Tax Intercept**

If child support is overdue and the case otherwise satisfies certain statutory requirements, the friend of the court must request an income tax “intercept.”

In such cases, any tax refund to which the support payer is entitled will be paid to the friend of the court, which will apply the money to pay past due support. For more information about tax intercepts, see “Tax Refund Offset Program” (PSA 13).

- **Other Enforcement Remedies**

If the payer is more than two months behind on the support payments, the friend of the court must report the arrearage to a consumer credit reporting agency.

The court may suspend the payer’s driving, occupational, sporting, or recreational licenses.

The friend of the court 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) and “Using Liens To Obtain Past Due Support” (PSA 23).

- **Health Care Enforcement**

The court may order either parent 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 friend of the court 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.

Some health care expenses are not covered by typical health care plans. Therefore, the court’s support order also will require each parent to pay a percentage of those noncovered expenses. Effective October 1, 2004, support orders will require that some of the noncovered health care expenses be paid in advance. The friend of the court will help collect the other parent’s share of those noncovered medical expenses if the following three conditions are satisfied:

- 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 after the request for payment was made.
- The first parent requests the friend of the court’s assistance within one year after incurring the expense, or within 6 months after the insurer denied coverage, or within 6 months after the other parent failed to pay as required.

If the friend of the court receives a parent’s request that meets those three requirements, the friend of the court 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 friend of the court must schedule a court hearing to decide who is responsible for the amount that the health insurer did not pay.

- **Criminal Enforcement of Support**

Under federal and Michigan law, failing to pay child support may be a felony criminal offense.

Friend of the court offices do not themselves have the authority to bring felony charges. Charges based on Michigan law are filed and prosecuted by county prosecutors or the Attorney General. Federal charges are filed and prosecuted by the United States Attorney's office.

- **Modification of a Child Support Order**

The friend of the court will review child support orders automatically once every 24 months if the child or one of the parents is receiving public assistance. In other cases, the friend of the court will conduct a review on written request by a party, but not more often than once every 24 months. If you need an immediate change in the support amount because of a change in your income or the other parent's income, you should file a motion requesting the change. Simply notifying the friend of the court that one parent's financial situation has changed cannot automatically change the ordered support amount.

- **Threshold for a friend of the court Motion to Modify the Support Order**

The friend of the court will ask the court to change the required 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% or \$25.00 per month, whichever is less. If the difference between the current support amount and the current formula amount is less than that minimum threshold, the friend of the court is not required to petition for a change.

- **Party's Motion to Modify the Support Order**

A party may file a motion to change the support order. The friend of the court will provide forms and instructions to any party who wishes to file this type of motion without the assistance of an attorney. Alternatively, a party may hire an attorney to file a modification motion.

- **Joint Motion to Modify Support Order**

If both parents agree to change the support requirement to the amount determined by the child support formula, they may sign an agreement and submit it to the court. That agreement, once put in the form of an order, signed by the judge, and filed with the county clerk, becomes the court's 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 does recognize one exception to that rule: a court may modify support retroactively if a party has intentionally failed to report an income change to the friend of the court or has made a report that misrepresented that party's income.

CHILD SUPPORT QUESTIONS AND ANSWERS

How do I get an order for child support?

If no one has yet commenced a civil lawsuit that raises the child support issue, you first must file a complaint that includes a request that the court enter a child support order. The next step is to file a motion asking the court to enter a child support order. The motion must be filed with the court clerk. If you and the other parent agree to establish support at the amount determined by the standard child support formula, you may sign an agreement (stipulation) to that effect and submit it to the court in the form of a proposed order. If you cannot agree to follow the formula, the judge will determine the appropriate amount of support.

Do I need an attorney to get a support order?

You are not required to have an attorney. However, you may find that you need an attorney's help to file the correct papers and otherwise follow the court rules.

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

Child support can continue up to age 19½ if the child attends high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate and the child continues to reside on a full-time basis with the person who receives the support payments.

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

Yes. An order's parenting time and child support provisions are enforced separately. (See Parenting Time Enforcement on page 11).

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

Contact the friend of the court 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 friend of the court or the Michigan State Disbursement Unit. May I pay the other parent directly?

No, not unless your order specifically allows direct payments. If it does not, you might not receive credit for payments made directly to the other parent.

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

No. The friend of the court must send any support payments that it receives from the other parent to the Family Independence Agency to offset the public assistance that you received from FIA.

Will the friend of the court make sure that child support money is spent on the children?

No. The law does not authorize the friend of the court to verify how child support payments are spent by the custodial parent. However, the court may change the custody or support arrangements if you can show that the custodial parent has neglected the children's needs by misusing your support payments.

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

The support amount is determined by the standard child support formula, which considers the parties' incomes. Therefore, an incarcerated payer's support obligation may be modified if a motion to modify support is filed. Either a party or the friend of the court may file that motion.

MISCELLANEOUS ISSUES

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the children's residence to a place not allowed by my current order?

Parties may agree to a change of residence (domicile) by signing an agreement (stipulation). This stipulation must be put in the form of an order and signed by the judge. It then becomes an order of the court. If you and the other parent cannot agree on the proposed change of domicile, you may:

- Try mediation through the friend of the court; or
- File a motion that asks the court to enter an order approving the change.

Notifying the friend of the court that you intend to move the children (or merely filing a motion requesting the court's approval) does not 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 friend of the court enforce what the judge said in court, even if it's not in the written order?

The friend of the court's authority is limited to enforcing *written* orders.

If you think a written order does not say what the judge said in court, first tell 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 friend of the court enforce property settlement provisions in my judgment of divorce?

No. The friend of the court has no authority to enforce the court's property-division order. The court will enforce its own order. If the other party does not comply with an order, you may file a motion asking the court to enforce the order.

Access to friend of the court Records

May I review the friend of the court file for my case?

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

If the friend of the court office will not let you see your case file, you may file a motion asking the court to intervene on your behalf.

May other persons see my friend of the court file?

A friend of the court file is not public information. However, the law requires a friend of the court office to allow the county's (friend of the court) Citizen Advisory Committee to see some case records of parties who have filed grievances. A Committee member who discloses case-record information is guilty of a misdemeanor.

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 regardless of the custody arrangement. That includes medical, dental, school, and day care records. In addition, both parents are entitled to receive advance notice of meetings that concern their child's education.

However, the friend of the court 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 Effect Child Support

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

When any of those “emancipating events” 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 past support must still be paid.

Parent Locator

Will the friend of the court help find a missing parent?

Yes. The state and federal governments have a parent locating service. You may use it to locate a parent for any of the following purposes:

- Collect child support.
- Obtain a court order on a child custody or parenting time matter, or enforce an existing order of either type.
- 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 Committees

What is a citizen advisory committee and what does it do?

Each county board of commissioners or county executive is required to appoint a friend of the court citizen advisory committee (CAC). A CAC advises the county board of commissioners and the Circuit Court Family Division’s chief judge about the friend of the court office’s performance and the community’s needs for additional friend of the court services.

A CAC may review a grievance filed with the CAC that complains about friend of the court Office operations. For more information on the citizen advisory committee's role in grievances, see the “Complaints” section of this handbook, below.

Who can serve on my county's citizen advisory committee?

The county board of commissioners or, where applicable, the county executive appoints the “public” members of the CAC. To be appointed, a person must live in the county. The public appointees must include a person who represents each of the following groups: advocates for children, noncustodial parents, custodial parents, attorneys who specialize in family law, mental health professionals who provide family counseling, and members of the public who do not fit into any of those categories.

In addition to the public appointees, the CAC must include representatives appointed by the county sheriff, the county prosecutor, and the county director of the Family Independence Agency.

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

How do I file a complaint about the friend of the court?

The Friend of the Court Act includes a grievance process. You may use it to complain about a friend of the court office’s operations or employees. [A grievance may not be used to change the friend of the court’s recommendation in your case, or to challenge a referee’s recommendation or a judge’s decision.]

Depending on the subject of your grievance and when you file it, you will receive a response from the friend of the court, the chief judge, or the local citizen advisory committee.

You can file a grievance in two ways:

- (1) File a grievance about the office's operations or employees with your friend of the court office. You should use a grievance form that you can get from your local friend of the court office or from the Michigan's One Court of Justice website at <http://www.courts.mi.gov>.

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

If you are not satisfied with the friend of the court's response, you may file the same grievance with the chief circuit court judge.

- (2) File a grievance about office operations with the citizen advisory committee.

Grievances filed with the citizen advisory committee may complain about only the friend of the court's office operations, not individual employees. Since the committee's role is advisory only, it cannot decide the grievance. However, it can investigate the grievance and hold public hearings to gather additional information. It then can report its findings to the chief judge and the county board of commissioners.

How do I file a complaint about the conduct of a judge or referee?

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

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

Judicial Tenure Commission
PO Box 11319
3034 W. Grand Blvd.
Cadillac Place, Ste 8-450
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
256 Marquette Building
243 West Congress Street
Detroit, Michigan 48226
(313) 961-6585

OTHER LOCAL HUMAN SERVICES AGENCIES

Your local friend of the court office may be able to provide a list of local human-service organizations that can assist you in ways that the friend of the court cannot.

GLOSSARY OF FREQUENTLY USED TERMS

Adjournment- Postponing a hearing until a later time or date.

Affidavit- A person's written statement of fact that is verified by that person's oath or affirmation sworn before a notary public.

Alimony- See spousal support.

Arrearage- The total of payments that are overdue.

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

Chief Judge- In courts with two or more judges, one judge is selected as chief judge. The chief judge administers the court. But only rarely may the chief judge reverse a decision by another judge of the same court.

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-Proof of a fact, presented by the testimony of witnesses, or by displaying documents, or by displaying other items.

Family Division of Circuit Court- The division of the circuit that hears domestic relations and juvenile cases.

Family Independence Agency (FIA)- The state agency that provides public assistance to families. The Protective Services Unit and the Office of Child Support are parts of FIA.

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.

Hearsay- A statement (usually by a person testifying in court), that repeats an earlier out-of-court statement (usually made by someone else). The testimony is considered hearsay if it repeats the original statement in an effort to prove the truth of that statement. Michigan's rules of evidence require judges to exclude most hearsay. There are exceptions.

Joint Custody- A custody arrangement in which the children either:

- (1) live primarily with one parent, although both parents participate in major decisions affecting the children (called "joint legal custody"); or
- (2) live with each parent for extended periods and both parents participate in the major decisions (called "joint physical custody").

Jurisdiction- The extent of a 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.

Order- A written decision of the court.

Party- A lawsuit's plaintiff or defendant.

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

Payer- The person who must pay support. Also known as an obligor.

Petition- See motion.

Pleadings- Papers filed with a court by a party to a lawsuit. Pleadings state claims against the other party or state that other party's defenses to claims.

PSA- Public Service Announcement. As used in this handbook, "PSA" means informational brochures published by the State Court Administrative Office.

Reconciliation- When parties to a domestic relations action work out their differences and decide to remain together as a family unit.

Show Cause Hearing- A 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 known as alimony.

State Disbursement Unit- A state office that collects and distributes the support payments required by the court orders.

Statute of Limitations- A statute that sets the time limit for seeking relief from a court. Different types of claims are subject to different statutory deadlines for starting a lawsuit.

TANF- Temporary Assistance for Needy Families, A joint federal-state program formerly known as Aid to Families with Dependant Children (AFDC or ADC). In Michigan, TANF is also known as the Financial Independence Program (FIP).

Testimony- The statements of a witness who has taken an oath to tell the truth.

Transcript- A word-for-word record of, for example, a court hearing.

Waive- To give up a right, claim, or privilege.

Witness- In court proceedings, someone who testifies under oath about what he or she has seen, heard, or otherwise observed.

C:\Files\Forms\Family Law\FOCHandbook.doc