

# Lapeer County Friend of the Court Handbook

Lapeer County Friend of the Court  
County Courthouse / County Complex Building  
255 Clay Street  
Lapeer, Michigan 48446

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## INTRODUCTION

This handbook provides information about duties and procedures for the Lapeer County Friend of the Court, rights and responsibilities of parties in family law matters, and information about basic court procedures in domestic relations cases.

Family law matters can be difficult for children. Parents can help by establishing or maintaining children's regular routines, encouraging frequent and regular contact between the children and both parents, being supportive of the other parent's participation in the children's school and other activities, and exchanging information regarding the children's well-being.

One of the two major goals of the Lapeer County Friend of the Court is to provide the highest quality of service to clients. With your assistance, the leadership of the Family Division of the Circuit Court, the cooperation of the Lapeer County Board of Commissioners, and the dedication of the friend of the court staff, I am certain we can achieve our second major goal which is to identify and fulfill the best interests of the children.

The Lapeer County Friend of the Court will assist you and your children in dealing with the issues and duties of your domestic relations matter.

Respectfully,

EMIL H. JOSEPH, JR.

Lapeer County Friend of the Court

## Domestic Relations Parties:

Family law matters are difficult and painful. The Family Court Division of the Circuit Court was created to assist you in the resolution of concerns which affect your family. The Family Court Division of the Circuit Court and Friend of the Court are aware of the many emotions which complicate the legal decisions surrounding you and your children.

Children need both parents. When you as parents cooperate, you reassure your children that change will be positive. You also build the foundation for your new parental relationship and responsibilities. The Family Court has devised a policy involving Domestic Relations Cases with Children. The Family Court policy is printed on the following two pages. **It is essential to the best interest of the minor child(ren) that both parties read and abide by this policy.**

We will do our best to handle your case quickly and fairly. Please follow the suggestions in this handbook and you will be well on your way to doing your part, during this, one of the most difficult periods in your life.

HON. NICK O. HOLOWKA

Chief Circuit Court Judge

HON. MICHAEL P. HIGGINS

Presiding Judge

Family Court Division

HON. JUSTUS C. SCOTT

Presiding Judge Pro Tem

Family Court Division

## FAMILY COURT POLICY

### DOMESTIC RELATIONS CASES WITH MINOR CHILDREN

(1) **CHILD SUPPORT:** Because child support can be ordered retroactive to the date of filing a petition, this Court encourages the non-custodial parent to make direct payment to the custodial parent prior to the entry of an order requiring payment of support. (You must keep a receipt signed by the custodial parent or a canceled check so credit for direct payment can be processed through the Friend of the Court.) **AFTER ENTRY OF AN ORDER FOR CHILD SUPPORT, PAYMENTS MUST BE MADE TO THE OFFICE OF THE LAPEER COUNTY FRIEND OF THE COURT** unless otherwise ordered.

(2) **RELATIONS WITH OTHER PARENT:** Parents have the affirmative duty to promote a good relationship between the child(ren) and the other parent. Parents will not speak disparagingly about the other parent in the presence of the minor child(ren) and each parent must insist that their friends and family not do so.

(3) **ARGUING IN CHILD(REN)'S PRESENCE:** Parents are prohibited from fighting or arguing with one another in the presence of the minor child(ren).

(4) **QUESTIONING CHILDREN:** Parents shall not question the child(ren) about the other parent or the other parent's activities.

(5) **INVOLVING CHILDREN IN COMPLAINTS:** Parents will not involve the child(ren) in complaints about the other parent nor will the child(ren) be required to make parenting time arrangements.

(6) **DISCIPLINE:** Parents will make reasonable efforts to support the decisions, discipline and rules of the other parent relating to the child(ren).

(7) **COUNSELING:** Neither parent shall involve the child(ren) in therapy or counseling without providing notice to the other parent unless requested to do so by Children's Protective Services or required by Court order.

(8) **SCHOOL PROGRESS:** Parents with joint legal custody shall keep the other parent informed of school meeting affecting the child(ren), report cards, progress reports, school disciplinary actions or any other significant event in the child(ren)'s educational program.

(9) **SCHOOL CHANGES:** Parents shall not enroll the child(ren) in a different school without providing notice to the other parent or by Court order.

(10) **SPECIAL EVENTS:** The parent who has knowledge of any awards, athletic, academic or artistic activity or special school event of the child(ren) to which parents are invited to attend, must give notice within a reasonable time to the other

parent so that other parent may attend. Parents shall not schedule events during the other parent's parenting time without prior approval.

(11) **CLOTHING:** Unless other arrangements are made, the custodial parent shall send sufficient clothing for parenting time with the other parent; clothing shall be returned with the child(ren) in a neat, clean condition.

(12) **MEDICAL:** Parents shall notify one another of the child(ren) illness or accident while in their care and send along any medications with dosage instructions.

(13) **PARENTING TIME POLICY:** Unless otherwise ordered or agreed upon by the parties, the Parenting Time Policy of the Lapeer County Friend of the Court will govern parenting time issues.

(14) **PARENTING TIME COMPLAINTS:** Parenting time complaints shall be made in writing within seven (7) days of the incident and sent to: Lapeer County Friend of the Court, 255 Clay Street, Lapeer, Michigan 48446.

(15) **LIVING WITH UNRELATED PERSONS:** Because of potential risk to children, a parent should not exercise custody or parenting time on an overnight basis when living with an unrelated adult.

(16) **SMILE ATTENDANCE:** Both parents shall attend the SMILE (Start Making it Livable for Everyone) Program through the Lapeer County Friend of the Court or an approved alternative program.

## **RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

### **Each party has the right to:**

- Schedule an appointment with the friend of the court employee investigating a dispute about custody, parenting time, or support.
- Request the friend of the court recommend whether a support or health insurance order should be modified. (See *Support Modification Actions Started by Parties.*)
- Expect the friend of the court to perform the duties required by Michigan statute and court rule.
- 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 employee or office procedure.
- Consult with his or her own attorney about any questions or concerns.
- Proceed in the case without friend of the court assistance (opt out) if agreed to by the other party and ordered by the court.

### **Each Party has a Responsibility to:**

- Inform the friend of the court, in writing, of the following information:
  - current residential and mailing addresses,
  - current employer or source of income's name, address, and telephone number,
  - current telephone number,
  - any occupational or driver's license 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 available as a benefit of employment or maintained by either party.
- Provide information to assist the friend of the court in carrying out its duties as required by law.
- Obey all orders of the court.
- Keep appointments made with the office, or take the time to cancel or reschedule the appointment.
- Treat friend of the court employees fairly and courteously.

## FRIEND OF THE COURT DUTIES

Michigan law created friend of the court offices in 1919. At least one office serves each circuit court's family division.

The friend of the court offices have the following duties:

- When directed by the judge, to conduct investigations and make reports and recommendations to the court regarding:
  - custody,
  - parenting time (which may include transportation),
  - amount of child support (including child care, medical support, and in limited situations, spousal support).
- To offer mediation, when both parents agree to participate, as an optional way of settling disagreements over custody or parenting time.
- Until the State Disbursement Unit (SDU) is fully operational, to collect, record, and send out all support payments as ordered by the court.
- To provide enforcement services on custody, parenting time, and support orders.

Material in this handbook will further describe general duties of the friend of the court. Specific procedures are established by local offices and may vary from office to office. Any questions regarding local procedures or requirements outlined in this handbook may be discussed with your local friend of the court or with an attorney of your choice.

To become familiar with some legal terms, please refer to the glossary.

### Opt out

Parties do not have to use the services of the friend of the court if they file a motion to "opt out," and the motion is granted by the court. Prior to entry of an order, the parties must file a document that includes a list of friend of the court services and a signed acknowledgment that the parties are choosing to do without those services.

When starting a case, the opt out motion must be filed at the same time as the complaint. If timely filed, the court must order the friend of the court not to open a case unless one or more of the following are true:

- A party is eligible for IV-D services because a party is receiving or has applied for public assistance
- A party has applied for IV-D services
- A party has requested the friend of the court to open a case
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child

The parties also may file a motion requesting the court to order the friend of the court to close its case. The court will issue the order unless it determines one of the following:

- That a party objects to the closure
- A party is receiving public assistance
- Within the previous 12 months an arrearage or custody or parenting time violation has occurred in the case
- Within the previous 12 months a party to the case has reopened the friend of the court case
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child

Closing a friend of the court case requires the parties to assume full responsibility for administration and enforcement of the court orders. To assure proper accounting of support payments and their consideration in future proceedings, the parties may choose to have support payments made through the SDU even after a friend of the court case is closed. A party may reopen a friend of the court case by applying for public assistance or requesting services from the friend of the court.

## **PROCEDURES OF THE COURT**

### **STARTING A COURT CASE**

Anyone who wants to start a court case must file the correct papers in the family division of the circuit court according to Michigan court rules. The court cannot require a party to use an attorney to start or to respond to a case. Cases sometimes involve many difficult questions, and it may be wise to have an attorney file the correct papers.

#### **Plaintiff's Complaint**

Each case begins with the plaintiff (the person requesting the court's assistance) filing papers which ask the court to order something (a complaint) concerning another party (the defendant). Among the things a complaint may ask the court to do are the following:

- Grant a divorce.
- Order child support or spousal support.
- Establish paternity.
- Grant an order for custody of a child.
- Establish parenting time with a child.

#### **Service**

Michigan court rules state that the defendant must be given a copy of the summons and complaint. The summons tells the defendant to answer the complaint. The summons and complaint must be delivered in a way that gives the defendant notice that a case has been started.

## **Defendant's Answer to Complaint**

The defendant is allowed time to answer the complaint. If an answer is not filed within the time frame permitted (usually 21 days after service), the defendant may lose the right to have his or her concerns heard by the judge. This could result in an order granting the plaintiff's requests.

## **HEARINGS**

After a complaint has been filed, either party or the friend of the court may file a motion asking for orders deciding custody, parenting time, and child support. The court gathers necessary information at a hearing to decide what should be ordered.

If a hearing is scheduled before a referee or judge, both parties must be notified of the time and place. This provides a parent with an opportunity to tell the judge or referee why a specific order should be made.

## **COURT ORDERS**

When a court makes a decision, someone must write it in the form of an order. This is usually done by the parties or their attorneys, but sometimes is done by the court. An order is not valid until a judge signs it and it is filed with the county clerk. A referee can recommend an order, but it is not valid until signed by the judge.

### **Temporary Orders**

When a court enters an order before the parties have had the opportunity to present all important evidence, the court will enter a temporary modifiable order. This often happens in divorce cases before the judgment ending the marriage.

### **Ex Parte Orders (orders entered without either party having to appear in court)**

Sometimes a judge will immediately enter a custody, parenting time, or child support order upon request of one of the parties. This happens when the judge is shown that serious harm will occur if an order is not entered before the other party has the opportunity to respond.

If a party disagrees with an ex parte order, that party must file a timely, written objection to the order, or file a motion with the court to change or cancel the order. Even if an objection or motion is filed, the order will continue to be effective unless it is changed by the court.

When an ex parte order contains child support, custody, or parenting time, the order must also include a notice that a written objection or motion may be filed within 14 days. If a party files an objection and the friend of the court cannot help the parties settle the dispute, the friend of the court will provide forms and instructions for scheduling a hearing with the court.

### **Final Orders**

After a motion has been fully considered, the court enters a final order. A final order ends activity on the motion, establishing requirements that the parties must follow.

Some final orders can be modified in the best interests of the children. These include orders deciding custody, parenting time, financial support of children, and domicile.

A change can only occur if it is ordered by the court. Normally, a court will order a change if both parties have agreed to the change and sign an agreement (consent agreement). Otherwise, the court will only order a change if a motion is filed and a court hearing is held.

Parties' agreements are only recognized by the court and the friend of the court when they are entered as an order of the court. Simply notifying a friend of the court employee or a Family Independence Agency worker of an agreement does not change the court order.

Sometimes, the friend of the court has an obligation to ask the court to change an order. (See *Parenting Time Enforcement and Modification of a Support Order*.)

## **Referees**

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 any domestic relations issue, except an increase or decrease in spousal support.

A referee hearing is different than a hearing before a judge. The findings of a referee are recommendations to the judge for an order. A referee's recommendation will become a court order only if neither party files an objection within specific time limits (or the court holds a hearing pursuant to an objection) and the judge signs an order containing the recommendation.

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

Contact an attorney for an explanation of how an objection and request for hearing should be filed. Some friend of the court offices also have information concerning how an objection may be filed.

## **Reconciliations and Dismissals**

Not every case ends with separated parents. If parties are trying to work out their differences and wish to have enforcement of their order stopped, they may file a motion with the family division of the court to request an order to suspend automatic enforcement. Enforcement of a support obligation cannot be stopped except by court order.

If parties wish to stop all further actions on a case, they must file an order of dismissal with the family division, and provide a copy to the friend of the court. The support payer must pay any past due support owed to the State of Michigan (which occurs when support is not paid while the custodial parent is receiving TANF), and any amounts owed to the court or the county.

## **Orders Where One of the Parents Leaves Michigan**

Child support continues regardless of where you live, unless changed by a court order. There are serious legal consequences if orders are not followed.

Child support does not end when a parent leaves Michigan, even if the child lives in a different state from the support payer. Both parents must tell the friend of the court whenever they

change where they live or work. The payer must continue to pay support through the friend of the court (or State Disbursement Unit, when appropriate) and the friend of the court continues to be responsible for enforcing the court order.

If a support payer leaves Michigan and support payments are not timely, or stop altogether, there are laws to assure that payments are made. Each state now has a law called the "Uniform Interstate Family Support Act (UIFSA)."

UIFSA assists states in dealing with cases where a party or source of income is in another state. It replaces other interstate child support laws. Under UIFSA, only one state has the right to establish or modify support. This right can be given to another state only if certain conditions are met.

Some of the procedures available under UIFSA include interstate income withholding, registration of the order in the other state for enforcement, registration of the order in the other state for modification, and a request to have the other state assist with discovery.

## **ALTERNATIVE DISPUTE RESOLUTION**

If you are a party to an action and have a dispute that you cannot resolve between you and the other party or parties, you are encouraged to participate in alternative dispute resolution (ADR). ADR may involve parents, grandparents, and even third parties.

Mediation is a common type of ADR. When parties go to court, decisions affecting their family are made by the judge. The judge must decide based upon all available evidence and according to law. Mediation places the responsibility for settling issues upon parties, without the direct involvement of the court. Mediation provides parents the opportunity to communicate, cooperate, and, with the assistance of a neutral third party, resolve disputes regarding custody or parenting time. Parties often find this rewarding, because they make the decisions instead of the court.

Following are the types of alternative dispute resolution available in domestic relations proceedings. You may contact an attorney or the friend of the court office to determine the types of alternative dispute resolution methods available in your area.

### **Friend of the Court Domestic Relations Mediation:**

The friend of the court is required to provide formal mediation services for disputes regarding custody or parenting time. The friend of the court may also provide informal mediation services. There is typically no cost for friend of the court mediation.

Friend of the court domestic relations mediation of custody or parenting time is voluntary; both parties must be willing to participate. If you reach an agreement, the mediator can put it into writing. You may review this agreement with your attorneys. If both parties agree, the agreement will be put in the form of a court order and signed by the judge.

Matters discussed during a formal mediation are confidential. A friend of the court employee who acts as a mediator in a case cannot share information about what happened during mediation, except for what is in the signed agreement of the parties. In addition, a friend of the court employee who acts as a mediator in a case cannot enforce, investigate, or serve as a

referee regarding any issues of that case.

## **INFORMATION ABOUT CUSTODY, PARENTING TIME, AND SUPPORT**

### **CUSTODY**

A number of custody arrangements are possible. In each type of arrangement, the court must decide who will make major decisions about medical treatment, education, and any religious instruction. The court must also decide how the child's time will be shared between the parties.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge must decide by considering factors set forth in the Michigan Child Custody Act. See MCL 722.23. The following factors will be considered at a hearing where the parents may produce evidence about each factor:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(I) Any other factor considered by the court to be relevant to a particular child custody dispute.

At the request of either parent, the court must consider ordering joint custody. If the parents agree on joint custody, the court must order it unless the court determines that joint custody is not in the best interests of the child.

When deciding, the court must state on the record its reasons for granting or denying the request. The court may consider joint custody without a parent's request. In addition to the normal factors considered when deciding custody, for joint custody the court must also consider whether the parents will be able to cooperate and generally agree concerning important decisions affecting the child's welfare.

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

## **Custody Questions and Answers**

### **● How do I change an order for custody?**

A motion must be filed to change a custody order. If parents agree, they may sign an agreement (stipulation and consent agreement), and obtain the judge's approval. That agreement will then become the new custody order.

### **● Can I file my own motion to change custody?**

You may file your own motion. The friend of the court will provide forms and instructions to file this type of motion. However, it is important to remember that the court will still hold you to the same rules to which an attorney would be held. There may be many complex issues in a custody case and you may wish to have an attorney represent you. The friend of the court office cannot file a motion for you, tell you what to say in a motion, or provide you with an attorney.

### **● Is there any way the friend of the court office can assist parties in reaching an agreement regarding custody?**

The friend of the court office will provide domestic relations mediation whenever there is a custody dispute and both agree to participate in mediation. (See *Alternative Dispute Resolution*.)

### **● After a motion for custody has been filed, and we cannot reach our own agreement, what does the friend of the court do?**

The friend of the court is required to:

- Offer mediation services to the parties, or
- If directed by the judge, conduct an investigation and file a written report and recommendation based upon the factors listed in the Michigan Child Custody Act.

### **● Do I have the right to receive a copy of the friend of the court report and**

## **recommendation on custody?**

Upon request, the friend of the court must give each party, or his/her attorney, a copy of the report, recommendation, and supporting information (or a summary of the information) used in making the recommendation. This report must be provided before the court takes any action on the recommendation.

- **What happens if I have an order for custody and the other parent does not return the child to me as stated in the court order?**
  - You may contact the friend of the court office in writing and request enforcement.
  - You may contact your attorney.
  - If you have reason to believe the other parent does not intend to return the child, you may contact the police or the prosecuting attorney and request that parental kidnapping charges be filed.
- **How do I enforce my custody order if the other parent has taken the child to another country?**

When a child of U.S. citizenship is illegally kept outside of the country, the State Department's Office of Children's Issues works with U.S. embassies and foreign authorities to assist the child and custodial parent. However, child custody disputes are private legal matters between two parents and the Department of State has no jurisdiction. If a child custody dispute cannot be settled, it often must be resolved by judicial proceedings in the country where the child is located. The State Department can assist parents in filing an application with foreign authorities and monitoring judicial or administrative proceedings for the return of the child.

- **How do I contact the Office of Children's Issues at the Department of State?**

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

That office can also be reached by phone at 202-736-7000, by fax at 202-647-3000, or on the internet at <http://travel.state.gov>.

- **Does the friend of the court have to investigate alleged abuse or neglect of a child?**

No. Allegations of abuse or neglect should be reported to the protective services unit of the Family Independence Agency office in the county where the abuse occurred.

The friend of the court has a duty, when ordered by the court, to conduct an investigation when a party files a custody or parenting time motion. Claims of abuse or neglect should be disclosed to the friend of the court office during its investigation for its use in recommending custody or parenting time.

- **Can my child enroll in the school district I live in, even though the child lives with the other parent most of the time?**

Michigan law provides that a child may enroll in a school district where either parent resides, regardless of which parent has custody. When a child regularly resides in two school districts as a result of a joint custody order, the child may attend school in either or both of the districts.

## **PARENTING TIME**

A parenting time order states when a parent may be with his or her children. The Michigan Child Custody Act (MCL 722.27a) 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."

During a person's parenting time, that parent is responsible for all routine decisions affecting the child. The Michigan Child Custody Act lists factors that the judge may consider when determining the frequency, duration, and type of parenting time to be granted. MCL 722.27a(6).

Parenting time guidelines can be found at the Michigan Supreme Court's web page (<http://courts.michigan.gov>).

### **Parenting Time Enforcement**

The friend of the court office is required to provide enforcement services for parenting time orders.

The friend of the court office will normally initiate enforcement if it receives a written complaint within seven days of the alleged violation stating specific facts which show a violation of the custody or parenting time order. However, the friend of the court office may decline to respond to the alleged violation if the complaining party has made two or more complaints found by the court to be unwarranted and has failed to pay costs assessed in those actions.

The friend of the court office may initiate enforcement by sending a copy of the complaint to the accused party within 14 days of when the office receives the complaint. The office must take further action if it determines that the alleged violation can be addressed by statutorily-established actions. By statute, the friend of the court may apply a makeup parenting time policy, 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.

A person may be found in contempt if the parenting time order is violated without good cause. The court may assess sanctions of up to \$250 for the first violation, \$500 for the second violation, and \$1,000 for the third violation when a person engages in a parenting time dispute in bad faith.

### **Parenting Time Modification Actions Started by Parties**

A party may file a motion for a change in the parenting time order. The friend of the court office will provide forms and instructions to any party who wishes to file this type of motion. A party

may also contact an attorney to prepare the forms and file the motion.

If both parents agree to change the parenting time order in a way that benefits their child, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it will become an order of the court.

## **Parenting Time Questions and Answers**

- **My order for parenting time states I have "reasonable" parenting time (or visitation). What does this mean?**

As parents you have a responsibility to arrange a schedule of parenting time which is reasonable based upon the best interest of each child and your family situation.

If you cannot agree upon a "reasonable" schedule of parenting time, the Lapeer County Parenting Time Policy will be used. If you disagree with the Lapeer County Parenting Time Policy, you have the following options:

- Ask the other parent to agree to a joint meeting with the friend of the court, mediation, or counseling.
- File a motion on your own or contact an attorney.
- **I have a specific parenting time schedule that I would like to change. What can I do?**
  - Ask the other parent to agree to a change. If you agree, the change and reasons for it may be presented to the court as a proposed new court order for parenting time. An agreement between parties is not enforceable without a court order.
  - The friend of the court will provide mediation if both parents agree to participate.
  - File a motion with the court for a change in the order. You may file the motion on your own, or have an attorney file it for you.
- **Child support payments are not being made. Do I have to allow parenting time?**

Yes. Parenting time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed. (See *Enforcement of Support*.)

- **The other parent is not sending or returning clothing or other personal items for our child. Is there anything the friend of the court can do?**

The friend of the court can only enforce the written order of the court. If your court order does not address clothing or other personal items, try to work it out with the other parent or through other means such as friend of the court mediation. If that is unsuccessful, you may file a motion with the court requesting an order that clothing or other personal items be sent for, or returned after, parenting time.

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

File a written complaint with the friend of the court.

If the complaint states facts showing violation of the parenting time order, and the complaint

can be addressed through statutorily-established procedures, the friend of the court will start enforcement action. (See *Parenting Time Enforcement*.)

- **It appears that the other parent has been drinking or using drugs. Do I have to let the children go?**

That is your decision as a parent. If you violate the court order in such a situation, you may have to explain to the court, at a "show cause" hearing, why you should not be held in contempt for your decision. This will include showing why your decision was in the best interests of the children.

- **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 order of the court. If your court order does not provide for telephone calls, try to work it out with the other parent or pursue other methods of resolution such as friend of the court mediation. If that is unsuccessful, you may file a motion with the court requesting additional parenting time through telephone access.

- **I am concerned that my child is being abused when 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 you think the abuse occurred. The friend of the court office does not have the authority to investigate and remove children in abuse or neglect matters. This is done by protective services through a separate action.

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

Parents are to obey court orders, regardless of the child's age. It is the parent's responsibility to promote a positive relationship with 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 with the court asking for a change in 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 for change of the parenting time order.

## **SUPPORT**

A support order is any order entered by the family division which requires the payment of support.

Support may include:

- Child support.
- Spousal support.

- Payment of medical, dental, and other health care.
- Payment of confinement expenses (these are the mother's costs related to the birth).
- Payment of child care expenses.
- Payment of educational expenses.

## **Support Investigations and Reports**

The friend of the court office is required to periodically review child support provisions, including health care, and file a motion for a change in the order if a change is warranted. (See *Modification of a Support Order*.) When reviewing support, the friend of the court office may request information from a parent's employer, including the parent's address, social security number, date of birth, wages earned, and dependant health care coverage available as a benefit of employment.

When directed by the judge, the friend of the court office will also conduct a financial investigation and make a written report and recommendation to the parties (or their attorneys) and the judge regarding child support. Friend of the court reports cannot be used as evidence in court without the agreement of both parties.

## **Child Support Formula**

Michigan law requires that the child support formula be used to determine child support amounts. A different amount may be used if the friend of the court or the judge state the amount required by the formula and a clear reason in writing or on the record why using the formula is "unjust or inappropriate." The formula and the Guidelin computer program for calculating support, may be found on the Michigan Supreme Court's web page (<http://courts.michigan.gov>).

## **Support Payments**

Unless otherwise ordered, support is paid through the friend of the court or the State Disbursement Unit (SDU). When the SDU is fully functioning, all support should be paid through the SDU.

When support received by the SDU sufficiently identifies to whom the support should be paid, it must be forwarded to the recipient within two business days of receipt.

Support is normally paid through income withholding. If you are paying directly, please include your case number at the time of payment. Do not send cash through the mail.

Once a year, upon written request, the friend of the court will provide parties with a free statement of their account.

## **Statutory Service Fees**

Michigan law requires that the friend of the court charge the payer of support a fee on all child support orders to partially offset administrative costs. The current fee is \$39.00 per year.

## **Surcharge on Overdue Support**

Public Act 141 of 1995 requires the friend of the court to add an annual surcharge of 8% on all support payments that are past due as of January 1 and July 1 of each year.

This law, effective January 1, 1996, means that every January 1 and July 1 the friend of the court office will add a surcharge equal to one-half of 8% to all support arrearage amounts (reduced by the amount of two weeks' support). For example, if there was an arrearage of \$1,000 on January 1, a surcharge equal to one-half of 8%, or about \$40, would be added to the arrearage amount due. This surcharge is added to all past due support, except for support ordered under the paternity act for the time period before the date of the original order.

The surcharge is paid to the person or entity who is owed the support arrearage on which the surcharge was added.

## **Automatic Support Enforcement**

The friend of the court is required to begin enforcement action when past due support reaches an amount equal to one month of support. This may be done without waiting for a complaint or request for enforcement.

## **Enforcement of Support**

The friend of the court has many options available to collect support. They include:

- **Immediate Income Withholding**

Income withholding tells the payer's employer or other source of income to withhold support and send it to the State Disbursement Unit. In addition to current support, the notice will also instruct that fees and an arrearage amount be withheld and sent. The friend of the court may increase the amount to be collected for arrearage if a payer's arrearage increases. The payer will be notified if this occurs, and has a right to an administrative hearing at that time.

Support orders entered or changed after December 31, 1990, must provide for immediate income withholding. In some limited cases, an order of income withholding will not take effect immediately. To delay income withholding, the court must find that "good cause" exists based upon at least all of the following:

- The court makes a specific written finding that income withholding is not in the best interests of the child(ren).
- All previously ordered support has been paid on time.
- The payer agrees to keep the friend of the court informed of the name, address, telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

## **OR**

- The parties enter into a written agreement that is approved by the court and provides that the order of income withholding will not take effect immediately, but that an alternative payment arrangement has been made. The payer shall keep the friend of the court informed of the name, address and telephone number of his/her current source of income, and specific information on any

health care coverage available to him/her through employment, or that is being maintained.

- **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 (known as a "show cause" hearing) by filing papers asking the court to order the payer to appear in court.

- **Income Tax Intercept**

If support is overdue, the friend of the court must request an income tax intercept for cases that qualify under the federal IV-D program.

In such cases, a tax refund due to the payer of support is sent to the friend of the court and applied to past due support for minor children. For more information about tax intercepts, see "*Tax Refund Offset Program*" (PSA 13).

## **Health Care Enforcement**

Both parents are responsible for providing health care coverage for their children. If a parent has coverage available at a reasonable cost as a benefit of his/her employment and fails to provide coverage, the friend of the court is required to send a medical support notice to the parent's employer.

Not all health care expenses will be paid by a health care plan. Support orders require each parent to pay a percentage of remaining uninsured health care expenses. The friend of the court will assist in collecting reimbursement of uninsured health care expenses required by the court's order if the costs exceed the limits set in the support order and the parent incurring the cost has completed a Demand for Medical Payment form and submitted it to the friend of the court office.

If the friend of the court receives a Demand for Medical Payment form which meets the requirements, the friend of the court must send a copy of the request to the other party, along with notice that if no objection is filed within 14 days the amount will become a support arrearage subject to any enforcement process. If an objection is filed, the friend of the court will resolve the dispute informally or by scheduling a court hearing.

## **Criminal Enforcement of Support**

Under federal and state law, failing to pay child support may be a felony. Friend of the court offices cannot bring felony charges. State charges are filed and prosecuted by local county prosecutors. Federal charges are filed and prosecuted by the United States Attorney's office. The federal government has established a special program to investigate and prosecute cases where the payer fails to pay child support, and the child and payer live in different states.

## **Modification of a Support Order**

The friend of the court will review child support orders once every 36 months. This review is automatic in public assistance cases, and upon written request in all other cases.

## Threshold for Modification

A "minimum threshold" establishes when a child support order should be changed. If the difference between the current support amount and the proposed support amount is 10% or \$5.00, whichever is less, the friend of the court will petition the court for a change. If the difference between the current amount and the proposed amount is less than the minimum threshold, the friend of the court is not required to petition for a change.

The friend of the court, or either party, may still file a petition for a change in the support order, even if the minimum threshold is not met.

## Support Modification Actions Started by Parties

A party may file a motion to change the support order. The friend of the court office will provide forms and instructions to any party who wishes to file this type of motion without the assistance of an attorney. A party may also contact an attorney to file a motion requesting a change in the amount of support.

If both parents agree to change the support order to the amount shown by the child support formula, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it will become a court order.

## Non-Retroactive Modification of Support

Once child support is ordered, it generally cannot be changed once it is due and payable.

If your financial situation changes, you should immediately file a motion to change the support amount. The court may adjust the support amount back to the date that the motion was filed.

**Simply notifying the friend of the court of a change in either party's financial situation does not change the court order.**

Effective January 1, 1997, Michigan law created an exception to the rule that support cannot be retroactively modified. The court may modify support retroactively where a party knowingly and intentionally fails to report, refuses to report, or knowingly misrepresents income that was required by the court to be reported to the friend of the court.

## Support Questions and Answers

### ● How do I get an order for child support?

A motion asking the court to order child support must be filed with the county clerk. If both parties agree to establish support at the amount shown by the formula, they may sign an agreement (stipulation). Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it will become a support order.

### ● Do I need an attorney to get an order for support?

You are not required to have an attorney to file a motion for support. You may find an attorney's help useful when filing papers and following specific rules.

### ● Can I receive child support after my child reaches age 18?

Unless the support payer agrees, child support can continue past age 18 only if certain

conditions are met. Support may continue up to age 19½ if the child "is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution."

- **Can I obtain payment information over the telephone?**

Yes. The date of last payment and account balance is available 24 hours a day by using the automated account information line maintained by the State of Michigan. Additional information is available from the friend of the court office.

- **If I have been paying my child support and the custodial parent is not allowing parenting time, do I have to keep paying support?**

Yes. Parenting time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed. (*See Parenting Time Enforcement.*)

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

Contact the friend of the court in writing for enforcement if overdue support equals the amount due for one month. You may also contact an attorney to start enforcement action.

- **The other parent is not paying the court ordered percentage of health care expenses. What can I do?**

If your court order states that health care expenses are to be divided by the parties, contact the friend of the court in writing and request a Demand for Medical Payment form. (*See Health Care Enforcement.*)

- **My court order states I am to pay confinement expenses and I have insurance that I believe will pay for all or a portion of these expenses. What can I do?**

Contact the friend of the court in writing and request a form letter that you can complete and send to the Michigan Department of Community Health.

- **My court order states I am to pay support through the Friend of the Court or State Disbursement Unit. Can I pay the other parent directly?**

No, not without a change in your court order. If you fail to get the order changed you might not receive credit for the payment.

- **If I am receiving public assistance (TANF or FIP), do I still get child support?**

No. The friend of the court must send to the state any child support payments made while you are on public assistance.

- **Is the friend of the court responsible for making sure that child support money is being spent on the children?**

No. The law does not give anyone the authority to verify how child support payments are being spent.

- **Will support be modified if the payer is in jail or prison?**

Michigan law requires support to be set according to the child support formula, which considers

the parties' incomes. Therefore, an incarcerated payer's support obligation might be modified if a motion to modify support is filed. That motion may be filed by either party or the friend of the court office.

## **Questions regarding Miscellaneous Issues**

### **Change of Domicile or Legal Residence**

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

Parties may agree to a change of domicile (residence) by signing an agreement (stipulation). Once this agreement is put in the form of an order, signed by the judge and filed with the county clerk it will become an order of the court.

If you and the other parent cannot agree upon a change of domicile, you may:

- Contact the other parent and see if he or she will agree to mediation; or
- File a motion on your own, or contact an attorney to help you file the motion.

Notifying the friend of the court or filing a motion does not allow you to move your children farther than allowed by the order. You must obtain a court order granting a change.

### **Enforcement of Judge's Verbal 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 Court speaks through its written orders. The friend of the court can only enforce the written order.

If you think a court order is different from what the judge said, tell the person who prepared the order and request a change. You can file a motion with the court to correct the order.

### **Property Settlement**

- **Can the friend of the court enforce the property settlement provisions contained in my judgment of divorce?**

The friend of the court is required to enforce custody, parenting time, and support provisions of orders. The friend of the court has no power to enforce property issues. The court has the ability to enforce its own order. You may file a motion with the court if there is a need for property settlement enforcement.

### **Access to friend of the court records**

- **I want to review my friend of the court file for my case?**

Parties, or their attorneys, must be given access to all information in their friend of the court records that is not confidential. See Michigan Court Rule 3.218.

The friend of the court may charge a reasonable fee for copying any records.

If the friend of the court denies your written request to access records regarding your case, you

may file a motion with the court for an order of access.

- **Can other persons access my friend of the court file?**

A friend of the court file is not public information.

### **Access to Other Records**

- **Can I access school, medical, and other records if my child lives with the other parent?**

Michigan law gives a parent the right to access certain records or information about his or her child regardless of the custody arrangement. Included are medical, dental, school records, day care provider records, and notification of meetings regarding the child's education.

The friend of the court has no authority to enforce this law against schools, health care providers, or others who refuse to provide the records. You may wish to contact an attorney if you are denied this right.

### **Adoptions, Marriages, and Other Acts of Emancipation**

- **What happens to my child support order and any support that may be owed if my minor child is adopted, marries, or enters the military service?**

Upon entry of a court order, child support will stop when children are adopted, marry, or enter the military service. Copies of adoption orders, marriage records, or military service records should be provided to the court.

Any amounts owed must still be paid. Contact the friend of the court to arrange to pay or collect any money owed.

### **Parent Locator**

- **What can the friend of the court do to find a missing parent?**

The state and federal governments have a parent locating service that can be used to locate a parent:

- to collect child support;
- to decide or enforce a child custody or parenting time matter; or
- to enforce state or federal law with respect to the unlawful taking or restraint of a child.

To use the parent locator service, the following information is helpful:

- The full name, date of birth, and social security number of the absent parent; and
- The last known address of the absent parent.

## **COMPLAINTS**

### **Friend of the Court**

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

The Friend of the Court Act provides a grievance procedure for complaints about friend of the court operations or employees. A grievance may not be used to change a friend of the court recommendation, or to disagree with the decision of a referee's recommendation or a judge's decision.

You can file a grievance about office operations or employees with your friend of the court office in two ways:

1. Filing a grievance form, which you can get from your local friend of the court office or on the web at <http://courts.michigan.gov>; or
2. Stating your concerns in a letter to the friend of the court and clearly identifying your letter as a grievance.

Within 30 days, the friend of the court must investigate and respond or issue a statement explaining why a response is not possible within that time.

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

The friend of the court grievance procedure ends with the processes just described.

## **Court Order**

### ● How do I complain about my court order?

If you are represented, discuss your legal options with your attorney. Options include filing a motion for a rehearing or filing an appeal.

Orders are not changed under the grievance procedure or by complaints to other government agencies.

## **Judge or Referee**

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

The Judicial Tenure Commission reviews complaints of misconduct by judges or referees.

Complaints concerning your court orders or referee recommendations should not be sent to the Judicial Tenure Commission. It cannot change the content of a court order or a referee's recommendation.

If you have a misconduct complaint, contact:

Judicial Tenure Commission  
P.O. Box 11319  
3034 W. Grand Boulevard  
Cadillac Place, 8<sup>th</sup> Floor, Suite 450  
Detroit, Michigan 48202

(313) 875-5110

## Attorney

- **How do I file a complaint about my attorney?**

The Attorney Grievance Commission investigates complaints of misconduct by Michigan attorneys.

If you have a complaint, contact:

Attorney Grievance Commission

256 Marquette Building

243 West Congress Street

Detroit, Michigan 48226

(313) 961-6585

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## AVAILABILITY OF HUMAN SERVICES

A list of local human service organizations may be available from the friend of the court office.

## GLOSSARY OF FREQUENTLY USED TERMS:

**Adjournment** - Postponing or putting off of a case or session of court until another time or place.

**Affidavit** - A written statement of fact that is verified by oath or affirmation.

**Alimony** - See spousal support.

**Arrearage** - Money that is overdue and unpaid.

**Bench Warrant** - A court order for the arrest of a person, so that he or she may be brought before the court.

**Chief Judge** - In courts with two or more judges, one judge is selected as chief judge. The chief judge is the director of the administration of the court.

**Domestic Relations Action** - Any action involving divorce, paternity, custody, parenting time, and support is considered a domestic relations action.

**Domicile** - The permanent home to which a person, when absent, always intends to return.

**Evidence** - Proof allowed at a hearing. Evidence may be presented through testimony of

witnesses and by documents, records and other material.

**Family Division of Circuit Court** - The division of the circuit court responsible for hearing cases about families and their children. The family division hears domestic relations matters, as well as juvenile matters formerly heard by the probate court.

**Family Independence Agency (FIA)** - The agency providing public assistance to families. Includes the Office of Child Support. Formally known as the Michigan Department of Social Services.

**Friend of the Court** -

1. An office of the family division; investigates and makes recommendations to the court in domestic relations actions involving minor children and enforces orders of the court.
2. A person; the director of the office.

**Hearsay** - A statement made by a person who is not in court, which is repeated in court to prove a fact. Most hearsay evidence is not allowed as evidence in court.

**Joint Custody** - An order of the family division which provides:

1. Parents will share in major decisions affecting their children (joint legal custody); or
2. Children will live with one parent part of the time and the other parent part of the time (joint physical custody).

**Jurisdiction** - The power of the court to decide cases before it. This power depends on the type of case and how closely connected the parties are to the county where the court is located.

**Motion** - A formal request made in writing to the court. A motion is sometimes called a petition.

**Order** - A decision of the court made in writing.

**Party** - A person legally involved in a particular action.

**Payee** - The person, or agency, to whom support is sent. Also known as recipient.

**Payer** - The person who is ordered to pay support. Also known as an obligor.

**Petition** - See motion.

**Pleadings** - Papers filed by a party in a lawsuit stating claims against the other party, or the other party's defenses to those claims.

**PSA** - Public Service Announcement. As used in this handbook, these are brochures available to the public.

**Reconciliation** - When parties in a domestic relations action are attempting to work out their differences and remain as a family unit.

**Show Cause Hearing** - A court hearing which is held so that a person can present reasons why he or she should not be considered in violation of a specific court order. Also known as a

"Contempt of Court" hearing.

**Spousal Support** - Money ordered to be paid permanently or for a specified period of time to support a spouse or former spouse.

**State Disbursement Unit** - A state office which collects and distributes support payments in accordance with the court's orders.

**Statute of Limitations** - In civil matters, the time limit on the right to seek relief in court for damages.

**TANF** - Temporary Assistance for Needy Families. Replaced Aid to Families with Dependant Children (AFDC or ADC). In Michigan, known as Financial Independence Program (FIP).

**Testimony** - The statement of a witness under oath that is given as evidence.

**Transcript** - A word for word record of proceedings at a hearing.

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

**Witness** - One who testifies to what (s)he has seen, heard, or otherwise observed.