
Support Enforcement Officer

Custody/Parenting Time Case Manager

OUR MISSION

The 36th Judicial Circuit Court - Friend of the Court Office strives to provide unbiased, professional, courteous services and educational information, in accordance with Federal and State laws.

We respond to the sensitive issues of custody, parenting time, and child support, while respecting the rights and dignity of all persons.

We work together with you to promote the best interests of the child.

**FRIEND OF THE COURT
HANDBOOK**

**STATE OF MICHIGAN
36th JUDICIAL CIRCUIT
FAMILY DIVISION**

Circuit Court Judges

Honorable William C. Buhl
Honorable Paul E. Hamre

Probate Court Judge

Honorable Frank D. Willis

Friend of the Court

LynnAnn E. Bullard

Office of the Friend of the Court

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Paw Paw, Michigan 49079

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Office Hours:

8:30 a.m. to 5:00 p.m.

Support Enforcement Officer's Telephone Hours:

Tuesday – Friday
2:00 p.m. to 4:30 p.m.

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INTRODUCTION

The purpose of this handbook is to provide information about Friend of the Court ("FOC") responsibilities to persons who have family division domestic relations cases. This handbook also outlines the basic responsibilities of parties. Any questions about procedures or requirements outlined in this handbook may be discussed with an employee of your local FOC or with the attorney of your choice.

While required by law, this handbook is not a legal document and is not intended to provide legal advice to you. Nothing in this handbook changes local rules or the laws of the State of Michigan, or the written requirements in your court orders. Similarly, while FOC employees will attempt to explain matters contained in this handbook, they are not allowed to give legal advice and nothing they say will change existing rules or law.

Many persons reading this handbook will already be involved in a domestic relations case and will have encountered many basic court procedures involved. For those who want further information about court actions and procedures, information is provided near the end of this handbook.

MISCELLANEOUS INFORMATION

OFFICE HOURS

The FOC is open Monday through Friday from 8:30 a.m. to 5:00 p.m.

Support Enforcement Officer's Telephone Hours are Tuesday through Friday from 2:00 p.m. to 4:30 p.m.

The FOC is closed on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day (4th of July), Labor Day, Veterans Day, Thanksgiving Day and the day after, Christmas Eve Day, Christmas Day, and New Year's Eve Day. If a holiday falls on a Saturday or Sunday, the FOC may also be closed on the Friday before or the Monday after that holiday.

ON LINE RESOURCES

The Van Buren County Friend of the Court web site is:
<http://www.vbco.org/government0255.asp>

Pin Change and Direct Deposit Forms can be obtained at:
<https://www.misdu.com/secure/>

The Michigan Child Support Formula Manual can be viewed at:
<http://www.courts.michigan.gov/scao/services/focb/mcsf.htm>

The following statutes can be viewed on line at:
<http://www.michiganlegislature.org>

Friend of the Court Act - MCL 522.501
Support & Parenting Time Enforcement Act - MCL 552.601
Child Custody Act - MCL 722.21
Paternity Act - MCL 722.711
Family Support Act - MCL 552.451
Uniform Interstate Family Support Act - MCL 552.1101
Uniform Child Custody Jurisdiction and Enforcement Act MCL 722.1101

Publications (brochures and handbooks) from the State Court Administrative Office/Friend of the Court Bureau:
<http://www.courts.michigan.gov/scao/resources/publications>

Michigan laws, court rules and educational resources are featured on the "One Court of Justice" web page. A wide variety of court forms are also available:

Michigan Supreme Court:
<http://www.courts.michigan.gov/supremecourt>

State Court Administrative Office:
<http://www.courts.michigan.gov/scao>

Child Support Calculator:
<http://www.courts.michigan.gov/scao/services/focb/mcsf.htm>

COMMUNICATION WITH THE FOC

FROM TIME TO TIME YOU MAY WANT THE FOC TO PERFORM A DUTY DESCRIBED IN THIS HANDBOOK. PLEASE PLACE YOUR REQUEST IN WRITING TO INSURE THAT IT IS ACCURATELY RECORDED AND DEALT WITH IN A TIMELY MANNER.

Please do not send material that is not required by an order, requested by the FOC, or part of your request. Inclusion of material in the FOC file does not make it admissible evidence and the FOC is not required to present material in its files at hearings. Also, the FOC is not required to maintain copies of correspondence that is mailed between the parties and then copied to the FOC.

The FOC has no authority to deal with emergencies. Concerns about the safety of your child should be directed to the Protective Services Unit of the Department of Human Services (DHS). For other problems, and to the extent staff is available, the FOC will attempt to timely help the parties resolve disputes regarding their children. If the parties cannot reach an agreement, the FOC will assist a party in the scheduling of a court hearing, as described later in this handbook.

WALK-IN SERVICE

The FOC can often answer general information questions without scheduling an appointment. However, if you need to talk to a particular FOC worker or need a longer meeting, we suggest you make an appointment to insure your questions can be addressed. If you do come to our office, you can expect FOC employees to be courteous, clean, and appropriately dressed. We ask the same of you.

Children should not be brought to the FOC office unless their presence is requested by an FOC worker. The FOC does not have persons to watch your children, nor does it have a suitable place for unsupervised children to wait.

INTERACTIVE VOICE RESPONSE (IVR) UNIT

The State of Michigan has an automated telephone system that is available to customers 24 hours a day, 7 days a week, that can be accessed locally by phoning (269) 655-1946. You may obtain information about your case by calling the IVR and setting up a Personal Identification Number (PIN). Your case balance and payment information will not be provided over the phone, because of privacy/confidentiality concerns and staffing

resources. This information must be obtained through the IVR unit.

Please use the IVR to the fullest extent possible. This will provide you with the quickest source of information about your case and insure that your caseworkers have time to help you with the issues that truly need the caseworkers' attention.

DUTIES OF THE FRIEND OF THE COURT

The legislature created the Office of the Friend of the Court in 1919. As suggested by its name, the purpose of the FOC is to help the court in determining proper orders for domestic relations cases, and to ensure the parties follow those orders. There is at least one FOC office for each circuit court in Michigan.

To assist the FOC in performing its duties, the legislature has passed laws requiring parties to keep the FOC informed of their current addresses and telephone numbers, the children's addresses, their current employers, their sources of income, whether or not they hold a driver's and/or occupational license, Social Security Number, and any health care insurance available for the children's benefit. **EACH PARENT MUST INFORM THE FOC IN WRITING OF ANY CHANGE OF HIS OR HER ADDRESS AND TELEPHONE NUMBER, AND SOURCE OF INCOME WITHIN 21 DAYS OF THE CHANGE.**

Other information will also help the FOC perform its duties. Please inform the FOC of any change of the status of a party or child, including marriage, legal guardianship or adoption, incarceration, bankruptcy, graduation from high school, or death. You should also notify the FOC if you and the other parent reconcile.

The FOC's responsibilities fall into four main categories: (1) helping parents to resolve their disputes without court action; (2) investigating facts where court action is necessary; (3) providing forms that help parties in filing support, custody, and/or parenting time modification motions without employing attorneys; and (4) initiating enforcement when it appears that the court's custody, parenting time, or support orders are not being followed by a party.

1) **Resolving Disputes Without Court Action.**

The primary goal of the FOC is to help parents in reaching agreements about issues involving their children. Following are the main ways the FOC helps the parties in reaching agreements.

- a) **Parent education.** The FOC sponsors a program to educate parents about the effect on their children of the breakup of their relationship, as well as about strategies to help children in coping with the changed relationship. The program is currently entitled "SMILE" (Start Making It Livable for Everyone) and meets monthly. Contact your FOC custody case manager if you would like more information about this program. Attendance at SMILE is mandatory in all newly filed divorce cases involving minor children.
- b) **Informal mediation.** FOC employees will meet with parents to help them figure out what each parent wants. Often, the parents discover that they want many of the same things and can agree on an appropriate court order, avoiding a contested court hearing. Informal mediation is also available through many of the area's counselors and through Citizens Mediation Service, Inc.
- c) **Formal mediation.** Michigan law requires the FOC to make formal mediation services available to the parties when there is a dispute as to custody or parenting time. Formal mediation has the same goal as informal mediation. However, to encourage parents to openly express their concerns, certain extra rules are imposed on formal mediation. First, both parents must agree to use mediation. Second, the mediator (the neutral person helping the parents reach agreement) cannot reveal to the court or anyone else the content of the discussions the parents had during the mediation process. Also, the mediator cannot later investigate any disputes between the parents or initiate enforcement of any court orders regarding the case. Some informal mediation will also follow one or both of these rules.
- d) **Drafting standard consent orders.** The FOC will sometimes draft consent orders for the parties when an agreement is reached through mediation or otherwise and this is done as a

courtesy; there is no requirement that the FOC draft the consent order. The court will enter a consent order without a full hearing if it finds that the order is in the best interests of the children. There is an order entry fee of \$40.00 for support orders, or \$80.00 for custody/parenting time orders.

- e) **Counseling Services.** The FOC may make a referral for counseling services for the parents and/or the children in a domestic relations case. The purpose of the counseling may include improving communications between the parties, or improving or maintaining a relationship between the parents and their child(ren).

2) **Investigation of Facts.**

The FOC may be required to investigate relevant facts regarding some issues scheduled to be heard by the court. When the FOC is required to investigate, prepare a report, or make a recommendation, this service may be provided through the FOC or it may be provided by an outside source. The cost of an evaluation from an independent contractor is costly and this expense may be passed on to the litigants. Factors in determining who should bear the cost of the evaluation include (1) the strength of the moving party's case, (2) the income of the parties, and (3) any other relevant factors presented. The evaluator, whether a Friend of the Court employee or an outside source, does not represent either party. While the Michigan Rules of Evidence provide for the admissibility of such an evaluation, each party would remain responsible for seeing that any evidence supporting his or her position is presented to the Court.

Below is a brief description of the FOC's investigation responsibility regarding custody, parenting time, and support. Further discussion of those areas follows later in this handbook.

- a) **Custody.** A custody order specifies who will make major decisions about a child and, in combination with the parenting time order, what parenting time each parent will have. A custody investigation is only conducted if there is a motion to establish or change custody pending before the court, the parents have indicated to the court that each parent wants a different custody order, and the court orders an investigation. (The investigation must be ordered by the court

or initiated by a referee.) The parents are assessed the costs of the evaluation, currently \$850.00.

- b) **Parenting Time.** A parenting time order establishes the parenting time for each parent with his or her children. The FOC may conduct a parenting time investigation if there is a motion to establish or change the parenting time order, the parties cannot agree on a new order, and the court requests an investigation. (The investigation must be ordered by the court or initiated by a referee.) The parents are assessed the costs of the evaluation, currently \$850.00.
- c) **Support.** A support order is any order that requires payment of money to provide for the needs of a child or a marriage partner. In addition to monthly support, support may include payment of medical, dental and other health care expenses; childcare expenses; and educational expenses.

Each party may request the FOC investigate support once every three years. Regardless of whether requested by a party, the FOC must investigate support once every three years if the children are receiving public assistance. Both parties will be advised of the FOC's findings regardless of whether support modification is recommended.

A party's income is best shown by recent pay stubs, income tax returns, and W-2 forms. Failing to provide the FOC with these documents may cause the court to enter an order unfavorable to you or cause you to be subpoenaed to appear before the court with the documents.

3) **Filing Motions Without the Assistance of an Attorney.**

The FOC is required to provide forms and instructions that help parties file motions for changes of child custody and/or parenting time, and support without an attorney's assistance (however, the party will still have to pay the filing fee, which is currently \$20.00, for each new motion). In addition to the filing fee there is an order entry fee of \$40.00 for support and \$80.00 for custody/parenting time motions.

You may obtain copies of the forms for use in Van Buren County at the FOC's website at no charge. Forms are available in the FOC office for a nominal charge.

In Van Buren County, most motions to change custody, parenting time, and/or child support are heard first by a referee. Please ask for the court's Administrative Order regarding hearings to see if your motion should be heard by a referee or judge, or see the Administrative Order on our web site.

For some other types of motions and orders, the State Court Administrative Office has prepared standard forms for use. The County Clerk may be able to provide a party with a copy of the standard form upon request adequately identifying the form needed. Also, standard court forms are available on the State Court Administrative Office (SCAO) web site.

4) Initiating Enforcement of Court Orders.

The FOC must initiate enforcement of the court's custody, parenting time, and support orders where it appears a party is not following the orders. The FOC has several enforcement methods available. It will choose the method it believes is most appropriate for the particular case before it. If a party believes another enforcement method should be used, that party may hire a private attorney to pursue the other enforcement method.

a) Support. The FOC must automatically initiate enforcement action against a support payer who has an arrearage equal to or greater than twice the monthly support obligation. This should be done without waiting for a complaint or request for enforcement from the person receiving support. The preferred method of enforcement is entry of an income withholding order.

If both parents want to temporarily stop the FOC from automatically initiating enforcement of the support order, they must file a motion requesting an order suspending that enforcement. An order granting suspension of enforcement will not be entered if the custodial parent is currently receiving public assistance or if there is money owed to the Department of Human Services. An order suspending automatic enforcement of support does not modify the amount of support due.

b) Custody and parenting time. The FOC must initiate enforcement of custody and parenting time orders if it appears a party is not following the court's orders and mediation (formal or informal) is unsuccessful in resolving the problem. The preferred enforcement method is to award makeup parenting time.

The FOC will investigate to determine whether there is a reasonable basis for believing that the order is not being followed. If the matter proceeds to a hearing, the parties remain responsible for presenting their own evidence regarding compliance with the order.

ALL COMPLAINTS REGARDING CUSTODY AND/OR PARENTING MUST BE IN WRITING. THE FOC CANNOT TAKE ANY ENFORCEMENT ACTION BASED ON A VERBAL COMPLAINT.

c) Medical Support Enforcement. The FOC will initiate enforcement as to reimbursement of a parent's portion of unreimbursed medical expenses, upon receipt of a written complaint. Please ask the FOC office for a medical support enforcement packet or see the rules about medical support enforcement on our website.

OPT OUT OF FRIEND OF THE COURT SERVICES

The parties may choose to opt out of Friend of the Court services, meaning the Friend of the Court would close its file and the Friend of the Court would not perform any of the functions described above, i.e. dispute resolution, investigation, modification of orders, collecting, disbursing, accounting of child support and enforcement of court orders. To opt out of Friend of the Court services, a party must file a Motion to Opt Out of Friend of the Court services, and both parties must sign an Advice of Rights form. A Motion to Opt Out will not be granted if either party or the minor child is on public assistance or if there is domestic violence or unequal bargaining power between the parties. In addition, if there is an outstanding arrears balance, the Friend of the Court may not close its file until the account is paid in full. In the event the parties have opted out of the Friend of the Court services and wish to have Friend of the Court services reinstated, either party would be required to file the necessary paperwork.

RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Each party has the right to:

- 1) Expect the FOC to perform the duties listed in this pamphlet;
- 2) Request the FOC to explain its procedures;
- 3) Be treated with courtesy by FOC employees;
- 4) Meet with the individual investigating a dispute before an individual makes a recommendation regarding the dispute.
- 5) File a grievance with the FOC concerning an employee or office procedure.
- 6) Consult an attorney regarding questions or concerns.

Each party has the responsibility to:

- 1) Inform the FOC, in writing, of the following information:
 - a. Current address and telephone number;
 - b. Current income status or source of income; including name, address and telephone number of employer or other sources of income.
 - c. Children's current residence address; and
 - d. Current information regarding health care coverage that is available as a benefit of employment or that is maintained by each party;
 - e. Whether they hold a driver's license and driver's license number.
 - f. Whether they hold a professional or occupational license.
 - g. Social Security number, unless exempt under law for religious convictions MCL 552.603(7)(d)
- 2) Provide information to the FOC to assist it in carrying out its duties as required by law;
- 3) Obey all orders of the court until changed by the court;
- 4) Keep appointments made with the FOC, or inform the FOC that you cannot attend the meeting and schedule a new meeting.
- 5) Treat FOC employees with courtesy.

MORE ABOUT CUSTODY, PARENTING TIME, AND SUPPORT

The first part of this handbook has described the FOC's basic responsibilities in domestic relations cases. The next part will provide additional information about custody, parenting time, and support.

CUSTODY

The court must consider the factors set forth in the Michigan Child Custody Act when deciding the parenting time each parent will have and who should make major decisions regarding the children. The factors stated in the Act include the following:

- 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 to 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 parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- l) Any other factor considered by the court to be relevant to a particular child custody dispute.

A number of custody arrangements are possible. There are two different kinds of custody, legal custody and physical custody.

- 1) **Legal Custody.** Legal custody is the authority to make decisions on major issues affecting the minor child
- 2) **Physical Custody.** Physical custody is the day to day care of the minor child.

Sometimes one parent is granted sole legal and sole physical custody of the child. This is the least common arrangement. Often times the parents are granted joint legal custody of the child with one parent having sole physical custody of the child. A situation that is becoming more common is both parents being granted joint legal and joint physical custody of the child(ren).

The court must consider joint custody upon the request of either party. In deciding whether to grant joint custody, the court must consider the twelve factors listed above, plus “whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.”

Questions and Answers About Custody

1. *How do I get an order for custody?*

You must motion the court to grant you custody of your child (there is a \$20 fee for filing a motion). If both parents agree and sign an agreement (a consent order), that agreement will be entered as a custody order if the court finds it is in the best interests of the child. There is also an \$80.00 order entry fee.

2. *How do I change an existing order for custody?*

You must file a motion to modify the custody order. In the alternative, the parents can sign a written agreement changing custody (consent order) which if approved by the court, will change custody.

3. *Do I need to have an attorney to get custody?*

You are not required to have an attorney to file a motion for custody. However, there are many complicated issues involved in a custody case and therefore you may want to have an attorney represent you. The FOC cannot file a custody motion for you.

4. *Is there any way the court can help us to agree on custody?*

The FOC is required to provide Domestic Relations Mediation. Mediation is a process where a neutral third party helps the parents to voluntarily settle a custody dispute. Both parents must agree to participate in this process.

5. *At what age can a child tell the court its preference?*

Michigan law does not provide for a certain age. In a custody dispute 12 best interest factors are reviewed, with one factor addressing the child's preference. The children's preference will be weighed by the fact finder, taking into consideration the child's age and maturity level.

6. *After a motion for custody has been filed, and we cannot reach our own agreement, what does the FOC have to do?*

The FOC is required to offer mediation services to the parties.

7. *Do I have the right to receive a copy of the FOC report and recommendation on custody?*

Parties must be provided a copy of the report as well as their attorney. The evaluation must include its recommendation and, upon request, make available any supporting documents (or a summary of the documents).

8. *What will happen 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 have several choices:

- a) You can contact the FOC and request that it enforce your order. If the other party does not voluntarily return the child upon the FOC's request, the FOC will motion the court for an order requiring the noncustodial parent to show cause why he or she should not be found in contempt of the court's custody order. This is not an emergency procedure.
- b) You can contact your attorney.
- c) If you have reason to believe that the other parent intends to keep the child, you can contact your local police agency and request that a parental kidnapping charge be pursued.

9. *Is the FOC responsible for investigating the alleged abuse or neglect of a child?*

No. Allegations of abuse or neglect should always be reported to the Protective Services unit of your local DHS office.

When a custody or parenting time investigation is conducted, the allegations of abuse or neglect should also be conveyed to the evaluator for inclusion in the report.

10. *What school will my children attend?*

The parties may agree to a school district and place that agreement in the court order. Unless your court order says otherwise, the child has a right to enroll in a school district where either parent resides, regardless of which parent has custody. A child regularly residing in two districts as a result of a joint custody order may attend school in either or both of the districts.

11. *What about a parent signing off parental rights?*

A termination of parental rights is a function in Probate Court and is not handled at the Friend of the Court Office.

12. *As the non-custodial parent, what is my relationship to my child's school and medical records?*

First, check with the principal of the school. You should have access to grades and attendance reports, and be able to attend conferences with teachers and counselors. You also have the right to attend school functions and athletic events. However, you do not have the right to pick your child up from school unless the custodial parent has previously given permission to school authorities, or permission has been authorized by a court order. You should also have access to medical records unless prohibited by a court order.

13. *Who may claim the child for income tax purposes?*

In general, the custodial parent is entitled to claim the minor child when filing their income tax return, unless otherwise stated in your order. If a party fails to comply with the income tax dependent provision set out in the court order, you will need to contact the Internal Revenue Service (IRS), as the FOC does not enforce violations of such provisions.

PARENTING TIME

The court must grant parenting time according to the best interests of the child. Michigan law requires the court to presume that a strong relationship with both parents is in the child's best interests. Accordingly, the court will enter a parenting time order for reasonable parenting time unless it finds by clear and convincing evidence that parenting time would endanger the child's physical, mental, or emotional health.

The court must also decide the frequency and length of parenting time according to the child's best interests. Further,

the court must grant specific parenting time terms if requested by either party at any time. When considering a motion to establish or modify parenting time, the court must consider the following factors:

- 1) The existence of any special circumstances or needs of the child.
- 2) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- 3) The reasonable likelihood of abuse or neglect of the child during parenting time. The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- 4) The inconvenience to, and burdensome impact or effect on, the child of traveling to and from the parenting time.
- 5) Whether the non-custodial parent can reasonably be expected to exercise parenting time in accordance with the court order.
- 6) Whether the non-custodial parent has frequently failed to exercise reasonable parenting time.
- 7) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- 8) Any other relevant factors.

Questions and Answers Regarding Parenting Time

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

This means the parents have the responsibility for setting up a mutually agreed upon schedule of parenting time. In Van Buren County if the parties cannot agree on a parenting time schedule, the FOC will presume that "reasonable parenting rights" means the rights set forth in the court's Parenting Time Policy. If you need a copy of the court's Parenting Time Policy, contact the Friend of the Court or you may view the policy at the FOC web site.

If you believe you should not have to follow the court's Parenting Time Policy schedule for parenting time, you can (a) contact the other parent and see if they will agree to a change in the parenting time order, if they agree, the FOC will assist you in drafting an order that contains your agreement (b) contact the other parent to see if he or she will agree to mediation of a parenting time schedule or (c) file a motion to have a different parenting time schedule

adopted. You may file that motion on your own behalf or contact an attorney to help you.

2. I have a specific parenting time schedule that I need to change. What can I do?

If you need a temporary change in your parenting time schedule, contact the other parent to discuss making other arrangements. If you need to make a permanent change, (a) see if you and the other parent can agree to a change (consent order); (b) if the other party agrees to mediation, contact the FOC to have mediation scheduled; or (c) file a motion with the court to have the order modified.

3. What decisions can I make when my child is with me?

During the time a child is with a parent, that parent may decide all routine matters. This would include such things as when the child will go to bed and who may be present during the parenting time. A parent's right to make decisions about any of these routine matters may only be restricted if ordered by the court.

4. Do I have to allow parenting time if the non-custodial parent is not making regular child support payments?

Yes. Parenting time and child support are separate orders and have separate enforcement procedures. The proper remedy for nonpayment of support is to proceed under the support enforcement provisions of the statutes and rules governing child support.

5. The other party is not following the parenting time order (i.e., the children are not ready for parenting time, the children are picked up or returned late, the parent does not see the children regularly as ordered by the court, etc.). What can I do?

File a written complaint with the FOC. If the FOC determines that it is likely that either parent has violated the parenting time order, it must initiate enforcement. Your written complaint must be submitted within 56 days of the alleged violation.

6. Clothing is not sent for or returned from parenting time. Is there anything the FOC can do?

When one parent has physical custody of the child, that parent should provide adequate clothing for parenting time. The parent exercising parenting time should return the clothing in good condition. Unless your court order states each parents' responsibility for clothing, the FOC cannot initiate enforcement; there must be a court order that has been violated.

7. I am concerned about the other parent discussing changes in the court orders with the children. What can the FOC do?

Unless your court order forbids such discussions, the FOC cannot initiate enforcement; there must be a court order that has been violated. The FOC encourages parents to refrain from discussing legal matters with the minor child. The child should not be brought into the disagreements of the parents.

8. The custodial parent has moved and failed to notify me or the FOC of the child's new address. What can I do?

You should contact the FOC for assistance in locating your child. If it appears that the other party intends to keep your child away from you for an extended period in violation of the court's orders, you may contact your local police agency. If certain conditions are met, Michigan provides that it is a felony for either parent to keep the child away from the other parent in violation of the custody or parenting time order. See MCL 750.350a.

9. I wish to visit with my grandchildren. What can I do?

The FOC does not have self help forms for grandparent visitation. You may wish to discuss this matter with an attorney. Additionally, requests for grandparent visitation are scheduled before a judge.

SUPPORT

All support orders shall be stated in monthly amounts due at the first of the month and past due if not paid by the last day of the month. A support order is any order entered by the court that requires the payment of support. Support may include (1) child support; (2) spousal support (alimony); (3) payment of medical, dental and other health care expenses; (4) child care expenses; and (5) educational expenses. The person who will be paying support must have sufficient contact with the state of the court where support is motioned for; if that connection does not exist where the custodial parent lives, a support order can be established through an interstate action.

In 1975, the United States Congress established the IV-D child support program to coordinate the services and benefits available to families with dependent children. The program provides partial funding to state and local jurisdictions for their child support enforcement efforts. The IV-D program expanded the support enforcement options to include such tools as income tax refund intercept and federal parent locator services.

Anyone who has or wishes to establish a child support order can apply for IV-D services simply by signing an application form. These forms can be obtained from the FOC office. In addition to the establishment of a child support order, the IV-D system can provide assistance with (1) support enforcement, reviews and modifications; (2) paternity establishment; (3) absent parent locating; and (4) tracking and monitoring of support payments.

1) Support Investigations and Reports Before Judgment or Order.

If ordered by the court before entry of a judgment or order, the FOC will conduct a financial investigation and make a written report and recommendation to the parties and the court regarding child support

Modification of Support Orders.

FOC initiated. The FOC will review support if any of the following conditions are met:

- a) If the child for whom support is being paid is on public assistance, not less than once every three years (unless the DHS gives notice that good cause exists not to proceed).
- b) Any time the FOC has reason to believe that the amount of the child support order should be changed.
- c) If a party requests a review, but only once every three years for each party.
- d) In certain cases, when requested by another state.

If a party requests a review and the FOC finds that the party has not made a request within three years, it will begin a review. It must complete its review and file a recommendation for support, within 180 days of the request. The recommended support amount must be in accordance with the parties' actual incomes and the Michigan Child Support Formula, unless the recommendation states reasons why use of the Formula is "unjust or inappropriate." The recommendation will become the order of the court unless one parent files a timely objection. If an objection is filed the FOC will schedule the support matter for a hearing.

Party initiated. A party may file a motion for a modification of the support order any time there has been a significant change of circumstances since the last support order was entered. The FOC has forms and instructions available to help parties who wish to proceed without the assistance of an attorney. There is a fee for filing petitions, which is currently \$20. There is also an order entry fee of \$40.00

The FOC does not conduct a financial investigation pursuant to a motion filed by a party, unless ordered by a judge or referee. Rather, the requesting party is responsible for bringing forth proofs in support of his/her request. As each party will be responsible for deciding what is the important evidence for proving his or her case, and presenting that evidence at the hearing, he or she may want to hire an attorney. As with any support order, the court will enter an order in accordance with the Michigan Child Support Formula (MCSF), unless it finds the formula amount to be "unjust or inappropriate."

2) Child Support Formula.

State and federal law require that a child support formula be used by FOCs, prosecuting attorneys, judges and referees when recommending or ordering child support amounts. All of these persons may deviate from the formula only if they decide that use of the formula would result in an unjust or inappropriate order. Reasons for deviating must be set forth in a report and recommendation by the FOC, and on the record or in writing by the judge or referee.

In Michigan, a child support formula has been developed which considers both the non-custodial and custodial parent's income. The formula specifies the amount that average parents with various combined incomes would spend on their children. That amount is then divided between the parents according to their portion of the total income. Since the custodial parent spends his or her portion directly, the support order only specifies the amount to be paid by the non-custodial parent.

For more information about the child support formula currently in use, you may contact either the FOC or your attorney. A copy of the formula may be

available at your local library or online at:
<http://www.courts.michigan.gov/scao/services/focb/focb.htm>

To purchase a copy of the Michigan Child Support Formula, contact West Group at: 1-800-344-5009 for phone orders and ordering information.

4) Collecting, Disbursing, and Accounting Support Paid.

Unless otherwise ordered by the Court, support payers must pay all support through the Michigan State Distribution Unit (MiSDU). The MiSDU must record and forward collected support to the payee at least once each month.

Payment for support made by personal check, money order, or income withholding should be mailed to MiSDU, PO Box 30350, Lansing, MI 48909-7850, along with a coupon identifying the payer's name, Social Security number, Docket number and the amount enclosed with the payment. To insure credit to the correct account, your docket number should also be written on all checks and money orders mailed to the MiSDU. Cash payments will be accepted in person at the Van Buren County Friend of the Court Office. Cash payments should not be mailed. The Friend of the Court accepts payments made by credit card by calling 888-604-7888.

The support payer is assessed two fees when the FOC is performing accounting functions. One fee requires payment of \$24 per year, which the FOC must transmit to the county. The other fee requires payment of \$18 per year, 80% of which is transmitted to the State of Michigan and the remainder to the county. In addition, a surcharge is assessed on all past due amounts of support. Currently, the surcharge is assessed on January 1 and July 1 of each year at a variable rate.

Assessed surcharge amounts are paid to the individual to whom support is due.

Once each year, upon a written request, the FOC must provide parties with a free statement of a year's review of the support account. The FOC may choose to supply this statement without first receiving a written request. Parties will be charged a per page fee for requests made more than once per year, or for a time period extending past one year.

MICHIGAN STATE DISBURSEMENT UNIT (MiSDU)

All support payments, those coming in from payers and employers and those outgoing to support recipients, are handled by a central location in Lansing, Michigan called the Michigan State Disbursement Unit (MiSDU).

The MiSDU issues child support payments to recipients via direct deposit or a debit card. All recipients of support may sign up for direct deposit. Call the IVR with any questions as to the processing of payments, direct deposit, and debit cards. The FOC strongly encourages that payees sign up for direct deposit. The form for signing up for direct deposit is available on the MiSDU website.

1) Automatic Support Enforcement.

The FOC has several options available to enforce delinquent support orders. The following is a partial listing of those options:

- a) **Income Withholding Orders.** Income withholding is the preferred method of enforcement. An income withholding order requires the payer's employer or other source of income to withhold from his or her paycheck. The support money is taken directly from a payer's check, similarly to the deductions for income taxes and social security. All support orders entered are now required to provide for immediate entry of an income withholding order, regardless of whether the payer has ever been behind on payments of support. For support orders entered before January 1, 1991, income withholding orders are entered if the payer has an arrearage equal to or greater than the monthly support obligation. If the payer lives out of state, and gets behind in making support payments, the FOC may begin an interstate income withholding action. However, the FOC must know the name of the payer's employer before it can take this action. In some limited circumstances, the parties may agree in writing to delay use of the immediate income withholding clause of their child support order. Also, the court has the authority to delay immediate income withholding if it finds that it would not be in the best interests of the child.

- b) **Show Cause Hearing.** If an order for income withholding is not effective, the FOC may begin a civil contempt proceeding by filing a motion with the court. The court enters an order requiring the payer to appear at a hearing to show cause (i.e., explain) why the payer should not be found in contempt of the court's support order.

If a show cause hearing is held and the payer appears, the referee or judge will decide whether the person is in contempt and what action should be taken. Both parties have the right to be represented by an attorney at the hearing. If the judge is considering placing the payer in jail, the judge must appoint an attorney if the payer requests an attorney and cannot afford to pay for one.

If the show cause hearing is held and the payer does not appear, the judge may issue a bench warrant for the payer's arrest. Once the judge issues a bench warrant, the responsibility for the payer's arrest lies with the local law enforcement agencies. If a bench warrant is issued for a payer's failure to appear, the court will assess the payer costs associated with the issuance of the warrant and any arrest.

- c) **Income Tax Refund Intercepts.** Federal law requires the FOC to submit the names of all payers who owe a minimum amount of arrears to the IRS for interception of the payer's federal income tax refund. Currently, the minimum amount of arrears is \$500.00 if support is owed to the custodial parent or \$150.00 if support is owed to the State of Michigan. Federal law also requires the FOC to submit the names of all payers who owe at least \$150.00 in support to the Michigan Department of Treasury for interception of the payer's state income tax refund. All refunds are forwarded to the MiSDU to be applied to the payer's support cases.
- d) **Liens and Bonds.** In some cases, the FOC may be able to obtain a lien on a payer's property or bank account or persuade the court to require the payer to post a bond. For more information, contact the FOC office.
- e) In some cases the FOC may request the court to suspend a driver's or professional license when the

payer fails to make payments and has an arrearage exceeding two months of one's child support obligation. For more information, contact the FOC office.

- f) **Work First.** In some cases a payer may be required to attend a job search program.
- g) **Consumer Reporting Agency.** In some cases the FOC will report a payer to a credit bureau when a payer has an arrearage of support of two or more months.
- h) **Felony non-support.** Federal and state law provides for criminal penalties for nonpayment of support. You can get more information about this at the Attorney General web site at <http://www.paykids.com/>. The FOC does not have the authority to file criminal cases for non-payment of support. If the Attorney General files a criminal case against a support payer the payer must contact the Attorney General's office.

1) Abatement of Support During Extended Parenting Time.

The MCSF provides that support should be reduced to one half any time the non-custodial parent has the children for a period of six (6) or more consecutive overnights. Most support orders contain a provision allowing for this credit.

To claim a parenting time credit, you should contact the FOC in writing soon after the parenting time ends. You may lose your right to the credit if you do not contact the FOC in writing within 14 days of the end of the parenting time. The parenting time abatement form is available on our web site.

After receiving your written request for a credit, the FOC will provide you with forms and instructions for claiming the credit. When the custodial parent is given notice that you are claiming a parenting time credit, the credit will be given unless the custodial parent

indicates in writing within 10 days of the notice that the credit is inappropriate.

If the custodial parent timely disputes the claim for a credit, the payer must motion the court to obtain the credit. If the payer successfully motions the court for the credit, he or she may be awarded court costs.

The MISDU is responsible for returning any parenting time abatement to the non-custodial parent. However, if an outstanding arrearage exists, a refund will not be issued, rather the non-custodial's child support arrearage amount will be reduced.

In addition, Michigan law provides that if the child resides with the payer of support full-time in excess of thirty days, support may be abated to \$-0- per month. The payer must notify the FOC of any change of residence of the minor child. Abatement of 100% of the support is not appropriate when the time spent with the support payer is part of regularly scheduled parenting time.

REDIRECTION OF SUPPORT

Michigan law provides that if a child is placed in foster care or if another individual is given legal responsibility for a child, the FOC may redirect support for that child to the State of Michigan or to the person who is legally responsible for the child.

Questions and Answers Regarding Support

1. How do I get an order for support?

You must file a motion with the Court asking for support. If both parties agree and sign a written agreement, it will be entered as a support order if it is approved by the court as being in the best interests of the children.

2. Do I need an attorney to get an order for support?

You are not required to have an attorney. However, an attorney may help you follow the court's rules when filing the motion and attending the court hearing. For paternity and family support actions, the Van Buren County Friend of the Court can sometimes help you with filing a motion for support, upon a referral from DHS.

3. Does the court have to use the Michigan Child Support Formula or the FOC recommendation when setting the amount of support?

The court must use the MCSF unless it finds that the parties' incomes were incorrectly computed or it finds the MCSF amount to be "unjust or inappropriate." The court must state its reasons for using a different amount than the MCSF amount.

4. 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 orders of the Court, with separate enforcement procedures. The proper remedy for denial of parenting time is to proceed under the parenting time enforcement provisions of the Michigan statutes.

5. The non-custodial parent is not paying support. What can I do?

Contact the FOC. If support payments are two months or more behind, the FOC will initiate enforcement. You may also contact a private attorney to file an enforcement action.

6. The payer of support is self-employed and is not making his or her support payments. What can the FOC do?

Income withholding orders are not usually effective when a payer is self-employed. In these cases, the FOC may seek enforcement using one or more of the following options:

- a) Motion the court for an order suspending the payer's driver or occupational license.
- b) Motioning the court for a show cause order.
- c) Submitting the payer's name for tax refund intercept.
- d) Filing a lien on the payer's property or bank account or requiring the payer to post a bond.
- e) Reporting past due support to Consumer Reporting Agencies.
- f) Refer payer to the non-custodial parent Work First program if the judge or referee determines the individual is under-employed.

7. My court order doesn't state to whom I am to pay support. Can I pay the support directly to the custodial parent?

No. Michigan law requires all support to be paid through the MiSDU, unless the court orders otherwise. This is done to keep an official record of payments. Any monies you pay directly to the other parent may be considered a gift.

8. What can be done if child support has been ordered by the court and either parent has a major increase or decrease in income?

The MCSF requires the FOC to consider both parents' income when making child support recommendations. If either party has had a large increase or decrease in income, a party may wish to contact the FOC to request a review of the support order or may file a motion on his or her own behalf.

If you and the other party agree to a change in the support order, and you sign a written agreement, that agreement will be entered as an order if approved by the court. If the amount agreed upon is different than what is recommended by the MCSF, the reasons for not following the MCSF should be explained in the order. If the custodial parent is receiving public assistance, their ability to negotiate a child support amount may be limited.

9. If I am receiving public assistance, do I still get child support?

No. All child support payments paid while you are receiving public assistance must be sent by the MiSDU to the Michigan DHS. If the child support amount exceeds the amount you receive from TANF, you maybe entitled to the difference.

If the payer is making payments, DHS will send you the first \$50.00 of any child support received each month. If you have questions about this program, contact the OCS.

10. Is the FOC responsible for making sure that child support money is being spent on the child?

No. Michigan law does not give the FOC the right to question how child support payments are spent. The MCSF calculation assumes that the monies are needed (and spent) for the benefit of the children.

11. Will my new spouse's income be considered when setting support?

The Michigan Child Support Formula does not consider the income of either party's new spouse. However, in unusual cases the income of a spouse may be reason to deviate from the MCSF amounts.

12. What if the other parent misrepresents their income to the court?

The court may retroactively modify support where a party knowingly and intentionally fails to report, refuses to report, or knowingly misrepresents income.

MEDICAL SUPPORT

Parties are required to keep the Friend of the Court informed of any health care coverage that is available through their employer, or if self-employed and have coverage for themselves. MCL 552.605

Information to be provided shall include but not be limited to: the name of the insurance company, health care organization or health maintenance, the policy, certificate or contract number and the names and date of birth of person for whose benefit he or she maintains health care coverage under the policy or plan MCL 552.619.

Most orders provide that one or both parents must obtain or maintain health care insurance for the child that is available to the parent, as a benefit of their employment at a reasonable cost.

Reasonable cost is defined as not more than 5% of a parent's gross income. An order for dependent health care coverage takes effect immediately MCL 552.603(7)(e). A party may contest the availability of dependent health care coverage MCL 552.626.

Medical Support Enforcement

If a parent fails to obtain or maintain health care coverage for the minor child/ren, the Friend of the Court may motion the court to show cause (i.e, explain) why the parent should not be held in contempt for failure to comply, or send a notice to the employer to deduct premiums and to notify the insurer or plan administrator to enroll the child/ren in dependent health care coverage. However; a party may object within 21 days of notice by providing proof the child *is* enrolled, or request a hearing that health care coverage is not available at a reasonable cost MCL 552.511.

Initiation of enforcement may begin through the following methods: (a) A complaint from the other party. (b) The child's receipt of medical assistance or (c) the motion of the Friend of the Court.

Payment of Health Care Expenses.

In addition to base child support, the MCSF provides for an additional amount to be paid to cover ordinary medical expenses, i.e. co-pays, medical expenses that are uninsured, etc. This is called ordinary medical support. Each parent is then responsible for a portion of the ordinary health care expenses that exceed the annual ordinary health care amount. Read your order to see what if any the annual ordinary health care expense is in your case and be familiar with the percentage of health care expenses you are responsible for.

Usually the annual ordinary health care amount is \$289.00 per year for a child.

If uninsured health care expenses are incurred, that exceed the annual ordinary health care amount, the parent billed for the cost should first send the other parent copies of the bill and any insurance statements, together with a request that the parent pays his/her portion. This should be done within 28 days after the actual amount of the expense is known (i.e., as soon as the amount of insurance payments are known).

If satisfactory arrangements for payment are not then made, you may notify the FOC that you need further assistance. The complaint must be submitted to the FOC within one year of the date the expense was incurred.

Information about the enforcement of medical support is available on our web site, or you can ask the FOC to mail a medical support enforcement packet to you.

Before any parent incurs expenses for orthodontia work for a child, they need to get the written agreement of the other parent.

MISCELLANEOUS ISSUES

CHANGE OF DOMICILE

Most orders provide that a parent must get the court's approval before changing a child's domicile (full-time residence) from Michigan. If the parties agree to a change of domicile and they sign a written agreement, it will be entered as an order if approved by the court.

If the parties cannot agree regarding a change of domicile, the party desiring the change has the following options: (a) contact the other party to see if he or she will agree to mediation; or (b) file a motion requesting a change of domicile.

Notification to the FOC or filing a motion does not allow you to change the child's domicile from Michigan. You must wait until a court order is entered. Failure to do so could result in the court finding you in contempt of its order. You may also risk a criminal charge of parental kidnapping.

100 MILE RULE

Michigan law provides that a minor child has a legal residence with both parents. If the parents have joint legal

custody of a child, the child's legal residence cannot be changed to more than 100 miles from a child's legal residence at the time a legal action commenced. Please call your attorney if you have questions about this law, MCL 722.31, or talk to your custody and parenting time case manager at the Friend of the Court. This is similar to a change of domicile. If the parties cannot agree regarding a change of domicile, the party desiring the change has the following options: (a) contact the other party to see if he or she will agree to mediation; or (b) file a motion requesting a change of domicile.

COURT SPEAKS THROUGH ITS WRITTEN ORDERS

The court speaks through written orders. Therefore, the FOC only initiates enforcement of the written orders, not what the judge or referee said at the hearing, and not what the parties agreed to outside of a court order.

If you feel the written order does not say what was agreed upon or what was stated by the court, bring your concerns to the attention of the person who prepared the written order and request a change. If that person neglects or refuses to change the order, you must file a motion with the court asking the court to correct the written order. Otherwise, the FOC will continue to be required to enforce the written order.

FOC APPROVAL OF ORDERS

In Van Buren County, the FOC must approve all orders regarding children before they are signed by the Family Court Judge. It is recommended that parties and counsel leave their orders with the FOC at least seven days in advance to allow time for FOC review and revisions by the parties, if necessary. You may also fax your proposed order to the FOC. A copy of the checklist of all required elements of an order is available on our web site.

If a party does not have an attorney, that party is responsible for drafting their pleadings, including complaints, motions, and/or orders.

ACCESS TO FOC RECORDS

The FOC is not a public file and is therefore subject to review only by certain individuals, such as parties, attorneys of record, etc. Request to access the FOC file must be in writing and, if granted, an appointment will be scheduled to review the file. At the time of review copies may be requested, for which the FOC charges a per page fee.

FRIEND OF THE COURT FILE (DESTRUCTION)

The Friend of the Court will destroy its file of your case ten (10) years after your Friend of the Court file was closed. The FOC file is not the public record maintained by the Van Buren County Clerk.

PROPERTY SETTLEMENT

The FOC does not have any authority to modify or enforce property settlement orders. You should seek the advice of an attorney regarding property settlement issues.

REFEREES

A referee is a person who takes testimony and makes recommendations for orders for entry by the court. A referee must be a licensed attorney.

The chief judge of a circuit court may appoint a referee to hear any domestic relations matter (except a motion to increase or decrease spousal support). In Van Buren County, referees hear most matters relating to children, including custody, support, and parenting time.

A hearing before a referee is similar to a hearing before a judge. That is, the parties must present facts which support their positions and the referee must base his or her decision on the facts accepted as evidence. Further, parties must act and dress in a manner appropriate for hearings before a judge. Failure to do so could result in a finding of contempt.

Although a hearing before a referee is similar to a hearing before a judge, the referee's recommendation for an order is not final. The court must approve the referee's recommendation. Usually, the referee's recommendation is a temporary order of the Court. The recommended order is the enforceable order while any objections are pending. Read your recommended order.

If a party disagrees with a referee's recommendation, and files a timely and specific objection, the party has a right to a review by the judge. To obtain this review, the party must serve the objection (and a notice of a hearing date before the judge) on the FOC and the other party. Once a review is scheduled, the judge will listen to disputed issues as if the referee had not previously recommended an order. The review before the judge may be limited to presenting new evidence that was not available at the referee hearing. The review before the judge may be limited to any of those issues that are specifically objected to.

A party who files a motion and then fails to appear at the referee hearing is not entitled to a review before the Judge. The party must file another motion and the required fees and begin the process over. In addition, a party who fails to appear at a hearing that was scheduled at their request may be assessed costs.

Parties who put agreements on the record before the referee are not entitled to reviews before the Judge.

PARENT LOCATOR

The state and federal governments have set up a parent locating service for IV-D cases. This service can be used to locate parents where one of the parent's location is unknown. However, the FOC can only use this service if a parent has signed a request for IV-D services.

The FOC, prosecuting attorney, and DHS support specialist can ask to use this service. The full name, date of birth, social security number, and last known address of the parent to be located are required.

DOMESTIC RELATIONS ACTIONS

There are several different types of domestic relations actions. The following will give a brief description of the most common types.

Copies of all papers filed in any case must be given to the court clerk by the person bringing the action or by his or her attorney. The original will remain in the circuit court file and an extra copy marked "Friend of the Court" must also be given to the court clerk and the court clerk will provide that copy to the FOC.

DIVORCE

A person wanting to end his or her marriage must have a circuit court enter an order dissolving the marriage. To grant the divorce, the court must find that there has been a breakdown in the marriage relationship to the extent that the parties cannot live together as husband and wife. At least one of the parties must appear in court to show that this breakdown really does exist. In Michigan, a divorce can be granted even if one of the parties does not want the divorce and without fault to either party.

A divorce ends the legal relationship between a husband and wife. The divorce does not end the family relationship, even though the relationship will change.

From the date of filing the complaint, there is a waiting period before the divorce will be granted. This waiting period is sixty days for divorce cases without children and six months where there are minor children involved. Michigan court rules require most divorces to be granted within eight months of the date of filing the complaint, although a longer time is permissible when needed to obtain necessary information or when the parties are attempting to reconcile.

After the waiting period is over, the judge may grant a divorce. Some of the provisions in the divorce judgment can be changed by the judge after it has been entered (i.e., custody, parenting time, child support and medical support). Once a judgment has been entered, parties must comply with its terms until such modifications.

Many decisions must be made before a divorce is granted. These decisions may include:

- 1) Who will make decisions, provide daily guidance, and take care of the children? (custody)
- 2) What contact will each parent have with the child? (custody and parenting time)
- 3) How should the property gathered during the marriage be divided? (property settlement)
- 4) How will financial responsibilities for the children be divided? (child support)
- 5) What amount, if any, should one party contribute towards the support of the other, either permanently or temporarily? (spousal support, also called alimony)
- 6) How will the children's medical, dental, and other health care expenses be paid? (health care coverage)
- 7) Will the wife take back her maiden name? (restoration of maiden name)
- 8) Will children be allowed to move from the State of Michigan? (domicile)

Divorce issues may be resolved in the following ways:

- 1) The parties may be able to reach an agreement by themselves or through their attorneys' assistance.

- 2) Custody and parenting time issues may be resolved through mediation provided by the FOC or private agencies.
- 3) A FOC referee may hear the issues and make a recommendation to the judge.
- 4) The judge may help in settling a matter by having a pretrial or settlement conference.
- 5) The judge will hold a hearing or trial on the issues that have not been resolved.

FAMILY SUPPORT ACTIONS

If parents are living separately but a divorce action has not been filed, a parent who has a minor child living with him or her may motion for a support order. Generally, family support actions are started by a prosecuting attorney's office after a referral by DHS. DHS makes referrals whether or not a party receives public assistance. In addition, a party can contact a private attorney to file an action.

Either parent may begin a divorce action even though the court has ordered support in a family support action. The family support order ends upon entry of a judgment of divorce. A copy of the judgment of divorce must be provided to the FOC. If delinquent support is owed under the family support action, plans to pay the back support must be made with the FOC.

Parties who reconcile after a family support order is entered and a divorce action has also been filed must obtain orders stopping support in both cases. Filing an order to dismiss the divorce case will not end the family support order.

PATERNITY ACTIONS

Paternity is a legal determination of the father, of a child born out of wedlock. Either parent can request the court establish paternity.

Generally, paternity actions are started by a prosecuting attorney's office after a referral by the DHS. DHS makes referrals whether or not a party receives public assistance. A party has the right to contact a private attorney to file the paternity action.

Once paternity has been established, the court may order child support, reimbursement of medical expenses for the birth of the child, and on-going health care expenses of the child.

Parenting time is not automatically ordered in paternity cases. If a parent who has a paternity action pending would like custody or parenting time, he or she should advise the FOC caseworker or their private attorney before the entry of the paternity order. The FOC cannot help with parenting time problems unless a court order for parenting time has been established by the court.

If the mother and father marry after the court enters the paternity order, they must give a copy of the marriage license to the FOC to end the support order. Arrangements must be made to pay all money owed to any public agency.

INTERSTATE ACTIONS

If the parent required to pay support leaves the State of Michigan, he or she must continue to pay support through the MiSDU. Failure to pay could result in a second state enforcing the Michigan Order to pay support. Just as when a payer leaves the state of Michigan support continues, a custody and parenting time order continues, until such time as modified. Failure of a parent to comply could result in a second state enforcing the Michigan Order as to custody and parenting time.

Effective June 1, 1997, when a support payer under a Michigan order moves to another state, the rights of the parties will be controlled by the Uniform Interstate Family Support Act (UIFSA).

If the child support payments stop, the FOC will attempt to locate an employer of the support payer. When an employer is located, the FOC will proceed to have an income withholding order entered. If the employer is not significantly connected to the State of Michigan, the FOC will request the payer's new state to enter an income withholding order. This is called an Interstate Income Withholding Action.

Sometimes the payer's employer cannot be found or the payer changes jobs too quickly for support to be collected by an income withholding order. In that case, the parent receiving support has several choices. If you are experiencing problems in receiving support from a party who lives in another state, contact your caseworker at the FOC.

PROCEDURES OF THE COURT

Any individual wishing to start a domestic relations action must file the correct papers with the Circuit Court Clerk. The

papers must be filed in accordance with the Michigan Court Rules.

There may be many complicated issues or rules involved in a domestic relations case. Although the court cannot require a party to use an attorney to start or respond to an action, it is recommended that parties involved in legal actions at least consult with an attorney. Following is a partial explanation of those papers and rules.

1) Plaintiff's Complaint.

Every domestic relations matter begins with the plaintiff filing a complaint, which asks the court to grant an order. For example, a complaint may ask the court to grant a divorce, provide for child support or spousal support, start an out-of-state support collection effort, or grant an order for custody and parenting time of a child. The defendant is the person against whom the complaint is filed. Once established, the plaintiff and defendant do not change, even though the defendant may later file papers asking the court to take some action.

2) Service.

The court rules require the defendant to be served with a copy of the complaint and summons. The summons is a document, which directs the person complained against to answer the complaint. This must be delivered in such a way as to give that person notice of the action against him or her.

The most typical ways to give notice are for a third party to personally hand the papers to the defendant or by mailing them in the manner allowed by Michigan Court Rule or by the defendant accepting service and signing an acknowledgement of service. If a person cannot be served in these common ways, the plaintiff can motion the court to allow another type of service.

3) Defendant's Answer to Complaint.

If the person served does not file an answer to the complaint within the time permitted by Michigan Court Rule, that person may lose the right to have his or her concerns heard by the court. This is called a default. This could result in the court entering an order giving the plaintiff everything requested in the complaint.

4) Ex Parte Orders.

In some cases a court may immediately enter a custody, parenting time, or child support order upon the request of one of the parties without first holding a hearing, this is called an ex parte order.

If a party disagrees with an ex parte order, that party must request the court hold a hearing to change the ex-parte order. This is done by filing a written objection or motion within 14 days after receiving the order. If an objection or motion is not filed within 14 days, the order automatically becomes a temporary order. The FOC has forms available for filing an objection without the assistance of an attorney.

An ex parte order is effective as soon as the judge signs it, whether or not an objection or motion is filed. The FOC may initiate enforcement if the payer has been served with the order and the time for filing an objection has expired. Therefore, it is important for the objecting party to obtain a hearing date as soon as possible to avoid having enforcement proceedings initiated by the FOC.

5) Temporary Orders.

After the complaint has been filed, matters such as custody, parenting time, the amount of support, and in some cases, spousal support (alimony), may need to be decided on a temporary basis until finally either party, or in some cases the FOC, may file a motion with the court asking for appropriate orders.

If a hearing before a referee or judge is scheduled, both parties will be notified of the time and place (bringing your notice with you will help court personnel point you to the right location). On that date, the parties present their positions to the court. The judge or referee may issue the order or one of the parties may be directed to prepare the order.

6) Reconciliations and Dismissals.

Not all domestic relations matters end in a divorce or continued separation of the parties. If the parties are attempting to work out their differences and wish to have enforcement of their court orders suspended, they must provide the court and the FOC with written notice of their reconciliation. A reconciliation notice does not dismiss an action or suspend a court order unless specifically stated in the notice.

When the FOC receives an order of dismissal, the current support order will stop. If any money is owed to the State or County, plans must be made with the FOC to pay that money. Money becomes due to the State when children have received public assistance, or when Medicaid has paid health care expenses, such as birth and confinement expenses. Money becomes due to the County for unpaid statutory fees or unpaid costs.

7) Judgment or Final Order.

A judgment of divorce contains orders of the court, which address support, parenting time, custody, property and other related issues. The judgment wipes out all orders entered prior to it unless those orders are preserved within the judgment. The exception is a child support arrearage owed to the State of Michigan, which is preserved even if not stated in the judgment.

If a party is dissatisfied with the judgment or final order, he or she may wish to contact an attorney. Once an order has been entered, a party has 21 days to file an appeal.

8) Modification of a Judgment or Order.

There are some parts of judgments and other orders that cannot be modified. Provisions that can be modified include custody, parenting time, support, and change of domicile. A change can only occur if (1) both parties have signed an agreement which, if approved by the court, will be entered as an order or (2) a motion has been filed, a hearing has been held, and the court enters an order granting a change.

**COMPLAINTS ABOUT THE DOMESTIC
RELATIONS LEGAL SYSTEM**

FRIEND OF THE COURT

Michigan law provides a grievance procedure that parties can use when they have complaints about FOC operations or employees. A grievance may not be used to disagree with a decision of a judge, referee, or an FOC employee's recommendation.

You can file a grievance in two ways: (1) by filing a grievance form, which you can get at your FOC office; or (2) by stating

your concerns in writing to the FOC in a letter clearly identified as a grievance.

The FOC must investigate and answer your grievance within a reasonable period of time. Most grievances will be answered within 30 days of the date that they are received by the FOC.

If you do not agree with the FOC's answer to your grievance, you can file a further grievance, in writing, with the chief circuit court judge. The chief circuit court judge also must investigate and answer your grievance within a reasonable period of time. The FOC grievance procedure ends with the response of the chief circuit court judge.

COURT ORDER

Court orders are not covered under the FOC grievance procedure. Contact your attorney for your legal options, such as a motion for rehearing or filing an appeal with the Michigan Court of Appeals.

JUDGE

The Judicial Tenure Commission was created to review grievances about alleged misconduct of a judge. Anyone who has serious concerns about the conduct of a judge can contact the Commission at the following:

Judicial Tenure Commission
PO Box 11319
Detroit, MI 48202
Telephone: (313) 875-5110

Complaints concerning your court orders should not be sent to the Judicial Tenure Commission. The Judicial Tenure Commission is not an appellate court and cannot change the content of a court order.

ATTORNEY

The Attorney Grievance Commission was created to investigate alleged misconduct of Michigan attorneys. Anyone who has serious concerns about the conduct of an attorney can contact this Commission at the following:

Attorney Grievance Commission
256 Marquette Building
243 West Congress Street
Detroit, MI 48226
Telephone: (313) 961-6585

AVAILABILITY OF HUMAN SERVICES

A list of local human service organizations may be requested at the FOC office. Numbers of many of those organizations can be found in your phone book under Michigan State Government or Van Buren County.

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