

**ST. CLAIR COUNTY FRIEND OF THE COURT**  
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**Interactive Voice Response System (IVR)**  
**24 hrs – 7 days a week (810) 989-6970**  
**(See IVR instruction card in back of Handbook)**

**Useful Websites:**

Department of Human Services (DHS)  
<http://www.michigan.gov/dhs>

Michigan Courts – <http://courts.michigan.gov/>

Michigan State Disbursement Unit (MiSDU)-  
<https://www.misdu.com>

Mediation website – <http://www.mediate.com>

Family law website – <http://www.family.findlaw.com>

Federal Office of Child Support Enforcement –  
<http://www.acf.hhs.gov/programs/cse/index.html>

A copy of the Michigan Child Support Formula may be  
Obtained ONLY through the following website:  
<http://www.courts.mi.gov/scao/services/focb/mcsf.htm>

When telephoning the Friend of the Court, please provide the name of the Judge on your case and whether your call is regarding custody, parenting time, child support or medical issues (either medical bills or insurance).

The St. Clair County Friend of the Court is part of the Family Division of the Circuit Court. The following Judges are assigned to the Family Division:

**Honorable James P. Adair**  
Circuit Court Judge  
Presiding Judge of the Family Division

**Honorable Elwood L. Brown**  
Juvenile Probate Judge, assigned to Family Division

**Honorable John D. Tomlinson**  
Probate Judge, assigned to Family Division

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## **INTRODUCTION**

This Handbook provides information about duties and procedures of the 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 and painful. The Family Division of the Circuit Court is responsible for addressing the legal concerns affecting your family. The Friend of the Court addresses issues of custody, parenting time and support ONLY. The Friend of the Court does NOT have the authority to investigate child abuse or neglect. Allegations of abuse or neglect should be reported to the Protective Services Unit of your [local Department of Human Services](#) (formerly Family Independence Agency).

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.

Children need BOTH parents. When you cooperate, you reassure your children that change will be positive. You also build the foundation for your new parental relationship and responsibilities. Your children will always want BOTH parents to be part of their lives, to attend graduations, be at their weddings, births of their children, and to be part of other major life events. They want to be able to say that, despite what mom and dad may have felt toward one another, they always treated each other with courtesy and respect and never put us (the children) in the middle of their dispute.

## **FRIEND OF THE COURT HANDBOOK**

As indicated above, family law matters can be difficult, but your contact with the St. Clair County Friend of the Court office can be helpful.

The purpose of this Handbook is to provide parents who have a domestic relations case with helpful and accurate information regarding Friend of the Court policies and procedures. Please follow the suggestions in this Handbook.

## **ST. CLAIR COUNTY FRIEND OF THE COURT FAMILIES IN TRANSITION PROGRAM**

The St. Clair County Friend of the Court sponsors a program entitled [FAMILIES IN TRANSITION](#). This is an educational program for parents with minor children who have a domestic relations case. Procedural information regarding the St. Clair County Friend of the Court Office is provided as well as information to help parents better understand the effects of domestic relations court matters have on children. This program is held twice a month; once during the day and once in the evening. A separate brochure regarding the Families in Transition Program is available upon request. It is strongly suggested that each parent attend this program unless they are able to resolve all issues by agreement.

For more information and/or to sign up to attend this program, you may telephone the St. Clair County Friend of the Court Office and ask for more information regarding the Families in Transition program.

## **OFFICE OF THE FRIEND OF THE COURT**

The Friend of the Court Office was created by Michigan law in 1919 and is mandated to provide the following services:

- To investigate, report and make recommendations to the Court to establish or modify orders for Custody, Parenting Time and Support.
- To provide mediation, when both parties agree to participate, as an optional way of settling disputes over custody and parenting time.
- To provide enforcement services regarding custody, parenting time, and support order obligations.

Legal advice CANNOT be given by Friend of the Court staff. ALL employees of the Friend of the Court (including Attorneys) are prohibited by law from giving legal advice.

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

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

- Expect the Friend of the Court to perform the duties listed in this Handbook as required by Michigan statutes and court rules.
- Request the Friend of the Court staff to explain office procedures and policies.
- 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 procedures. An objection to a recommendation is NOT a grievance.

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

1. Inform the Friend of the Court, in writing, of the following information:
  - a. Current residential and mailing addresses; and any change of address;
  - b. Current employer or source of income's name, address, and telephone number;
  - c. Current telephone number;
  - d. Any occupational or driver's license held, and the driver's license number;
  - e. Social security numbers of parties and minor children unless exempt by order or Statute;
  - f. Current and/or any change of address of minor children;
  - g. Current information regarding health care coverage.
2. Provide information to the Friend of the Court Office to assist in carrying out its duties as required by law.
3. Obey all orders of the Court.
4. Appear on time for all hearings and appointments with Friend of the Court staff.

Keep all appointments or take the time to cancel or reschedule. Hearings may only be cancelled or adjourned in accordance with court rule or policy as reflected on the hearing notice.

5. Treat Friend of the Court employees with courtesy and respect.

### **ATTORNEY REFEREE**

A referee is an attorney employed by the Court whose function is to hold hearings on domestic relations matter including but not limited to issues of custody, parenting time, change of domicile, change of legal residence and support.

The referee may administer an oath; compel the attendance of witnesses and the production of documents and question witnesses and parties. A referee hearing is different than a hearing before a Judge for a court order. After the information and evidence is presented, the referee will make a recommendation.

A party who disagrees with a referee's recommendation may object and request a new (de novo) hearing before the Judge. The objection must be filed with the Friend of the Court within 21 days from the time the recommendation is made.

Referee hearings are recorded. No other recordings of a hearing may be made. A transcript of a referee hearing may be requested by either party. A deposit is required and total cost is assessed per page.

DO NOT bring children to a referee hearing. If a child is to be interviewed by a Friend of the Court staff member, an appointment will be made after the referee hearing.

### **INTERVIEWS AT THE FRIEND OF THE COURT OFFICE**

If a report and recommendation is to be prepared, an interview at the St. Clair County Friend of the Court Office may be necessary. Information gathered during the interview will be used to prepare a recommendation. A decision as to the recommendation will NOT be made at the time of the interview.

If you wish to have an attorney accompany you to an interview, YOU must advise your attorney of the date and time of your interview. Notice of an interview is not sent to attorneys.

### **PROCEDURES OF THE CIRCUIT COURT FAMILY DIVISION**

Any individual wishing to start a domestic relations case must file the correct papers in the Circuit Court according to 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 retain an attorney to start or respond to an action, it may be advisable to have an attorney file the correct papers and follow the Court rules. If you choose to represent yourself, Friend of the Court staff CANNOT give you legal advice – that includes advice on how to file and litigate your case. All orders with provisions reflecting custody, parenting time and/or support (child support, child care, medical or spousal support/alimony) must be reviewed and approved by the Friend of the Court prior to submission to the Judge for signature.

## **I. DIVORCE**

### **EX PARTE ORDER**

An ex parte order is an order signed by the Judge without notice to the other party. An ex parte order will be approved by the Friend of the Court and signed by the Judge ONLY if accompanied by a signed affidavit or verified complaint alleging specific irreparable harm that will occur if the ex parte order is not signed. If an ex parte order is signed by the Judge, the order will include a notice that a written objection or motion may be filed within 14 days. 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 County Clerk to change or cancel the order. The ex parte order signed by the Judge will continue to be in effect until a hearing occurs before the Judge or referee. A ruling will be made on whether the ex parte order will remain in effect and become a temporary order or if the order is to be modified. If no objections are filed within the 14 day period, the ex parte order automatically becomes a temporary order and will remain in effect unless modified by the Judge or a final order is entered.

### **TEMPORARY ORDER**

If divorcing parents have separated (living in different homes), and a complaint for divorce has been filed and served on the other parent, a temporary order may be entered. This order will reflect a temporary award of custody, parenting time and support. A referee hearing may be requested and a recommendation made regarding temporary custody, parenting time and support. A temporary order may be entered by consent (with or without a referee hearing). If a recommended temporary order is objected to, an order may be set on before the Judge for a ruling on a temporary order. Once a temporary order is signed by the Judge, it must be followed and will be enforced. If a temporary order is entered, an order of referral for complete investigation of custody, parenting time and/or support may also be entered to address those issues on a permanent basis.

All temporary orders and final judgments MUST be accompanied by the State Court Administrator Office approved [Domestic Relations Judicial Information Form](#), FOC 100 11/05.

### **JUDGMENT OF DIVORCE**

A judgment of divorce contains the orders of the court reflecting the dissolution of the marriage, custody, parenting time, domicile/legal residence, support (including medical and insurance obligations), property and various other issues. Friend of the Court does not enforce or make recommendations regarding property settlement issues.

All temporary orders and final judgments MUST be accompanied by the State Court Administrator Office approved [Domestic Relations Judicial Information Form](#), FOC 100 11/05.

### **POST JUDGMENT RELIEF**

After the judgment is entered, some portions of the judgment can be modified. Modifications may occur regarding custody, parenting time, domicile/legal residence, and/or support. A change can only occur if it is ordered by the court. A change can occur by consent of both parties or as a result of a motion filed by either party. 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 of an agreement DOES NOT change the court order.

## II. FAMILY SUPPORT ORDER

A family support action results in a court order requiring a non-custodial parent to provide support in addition to establishing custody and parenting time. Family support actions apply to married and unmarried parents who are not living in the same home. A family support action may be started when the parent residing with the children (or a 3<sup>rd</sup> party with legal status) files an action in Circuit Court, receives state assistance on behalf of the minor children or requests the Department of Human Services (DHS) to start a family support action. To start a family support action through the Department of Human Services, a parent (or 3<sup>rd</sup> party custodian) must CALL a DHS representative at 1-866-661-0005, or [complete the necessary forms](#) in their local Friend of the Court Office. Family support actions are started by the Prosecuting Attorney's Office after a referral from the Department of Human Services (regardless of whether state assistance is being received). If the parties to the action are married or the parties are not married and have an affidavit of parentage (or if the plaintiff is a 3<sup>rd</sup> party custodian), a referee hearing will be scheduled after the defendant has been served with a copy of the complaint for support. If parents are not married and the alleged father has not signed an affidavit of parentage, paternity must first be established before the matter is referred for a referee hearing. Paternity will be established through the Prosecuting Attorney's Office, either by the defendant signing an affidavit of parentage, admission after DNA testing or by default based on testimony from the mother in court. Once paternity has been established, the case will be referred to the Friend of the Court for a referee hearing. The father on an unmarried non-support action between the parents will be ordered to pay a percentage of uninsured costs of pre-natal care and delivery of the child. If the parties marry each other, any unpaid obligation for the cost of the birth remaining at the time a marriage certificate is provided to the Friend of the Court will be removed from the account. If the parents later separate and support is ordered, the unpaid obligation will be re-instated on the account.

The referee will make recommendations regarding custody, parenting time and support. A report and recommendation will be sent to each party and to the Prosecuting Attorney's Office. An order will be prepared by the Prosecuting Attorney's Office and set on for entry before the Judge. If parties agree to the recommendation, appearance is not required when the order is signed by the Judge. If either party objects to any portion of the referee recommendation, personal appearance is REQUIRED to state the objection to the Judge. An order will be entered based on the Judge's ruling after hearing all objections. If there are no objections, an order will be entered reflecting the recommendation of the referee.

**THE FRIEND OF THE COURT CANNOT MAKE ANY RECOMMENDATIONS OR PROVIDE SERVICES IN ANY WAY UNTIL A FAMILY ACTION HAS BEEN FILED AND THE MATTER REFERRED TO THE FRIEND OF THE COURT.**

### RECONCILIATION/DISMISSAL

Not every divorce matter that is started ends in divorce. You may work out your differences and stop your divorce action. An order of dismissal MUST be filed with the court. A copy of the dismissal must be sent to the Friend of the Court to stop enforcement of a court order.

If you have a family support order and are now living together, you MUST provide proof to the Friend of the Court in order to stop the charging. The family support action will not be dismissed. If you separate again, your order will be re-activated and begin charging upon request or receipt of state benefits on behalf of your children. A family support order will stop charging if a judgment of divorce between the parties is signed by the Judge.

If an order stops charging, and a full TANF grant or Medicaid has been received during the time a support order was charging, ALL arrears owed to the State of Michigan must be paid (including ordinary health care expenses which accrued while the custodial parent received Medicaid). If arrears are owed to the custodial parent, those arrears may be eliminated.

## **ORDERS WHEN ONE PARENT LEAVES MICHIGAN**

All provisions of orders continue regardless of where either parent lives, unless changed by a court order. There are serious legal consequences if orders are not followed.

Custody provisions remain in effect. It may be necessary to modify current parenting time provisions. Parties may agree to implement the long-distance parenting time schedule if a parent moves more than 200 miles away (or agree to a different schedule). If parents cannot agree to a new schedule, the parenting time schedule will be addressed in response to a motion for change of domicile or a motion to modify the parenting time order. (Also refer to [Change of Domicile](#) and [100 Mile law](#) provisions of this handbook).

Child support DOES NOT stop when a parent leaves Michigan, even if the child lives in a different state from the support payer. Both parties must advise the Friend of the Court whenever they change where they live or work. The payer must continue to pay support 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 paid timely or stop, 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. For more information, see "[The Uniform Interstate Family Support Act \(UIFSA\)](#)" (PSA 29).

## **FRIEND OF THE COURT DOMESTIC RELATIONS MEDIATION**

The Friend of the Court is required to provide formal mediation services for disputes regarding custody and parenting time. In St. Clair County, these services are provided by a Mediator on staff in the Friend of the Court Office. There is no cost for mediation.

Child support cannot be mediated. However, child support will be calculated pursuant to the [Michigan Child Support Formula](#) based on the custody and parenting time agreement. Parties may choose to incorporate the support requirements in a final order after mediation. That order must reflect support required based on the Michigan Child Support Formula and if the parties choose to deviate from the Formula, their agreed upon support provision will also be reflected in the order.

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 will reflect your agreement in writing. You may review this agreement with your attorney. If both parties agree, the agreement will be put into order form and signed by the Judge.

Matters discussed during a formal mediation are confidential. A Friend of the Court Mediator 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 Mediator cannot enforce, investigate or serve as a referee regarding any issue of that case.

## **COURT RULE DOMESTIC RELATIONS MEDIATION**

The court may refer family matters to mediation under the Michigan Rules of Court (MCR 3.216). This may occur when the parties agree to mediation, upon written motion of one of the parties, or upon the direction of the court.

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

### **III. CUSTODY**

A custody order specifies with whom the children shall live. The term custody determines who will have the responsibility for the minor children and make the day-to-day decisions regarding the children. Whatever the custody arrangement, parents must always work together for the benefit of their children.

Parents are encouraged to reach their own agreements regarding custody in the best interest of the child(ren). When parents cannot agree, the Judge must decide by considering factors set forth in the Michigan Child Custody Act. See MCL 722.23. These factors will be considered at a hearing before the Judge where the parents may produce evidence about each factor.

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 interest of the child, or if the parents are unable to communicate or cooperate on important decisions regarding the child(ren).

There are three possible custody agreements:

**1. Sole Custody:** The court order states that legal and physical custody is placed with one parent and that parent is responsible for making all decisions on important issues as well as all day-to-day decisions regarding the children, without input from the other parent. The 100 mile law does not apply when sole custody has been awarded to a parent. (Change of domicile requirement DOES apply). . A parent with sole legal custody does not need court approval to move the child's legal residence more than 100 miles away from the other parent's residence. A custodial parent with sole legal custody is required to obtain the Court's permission to change the child's domicile to a different state.

**2. Joint Legal Custody with Physical Custody to one parent:** The court order states that physical custody is placed with one parent but that BOTH parents are awarded joint legal custody which gives both parents input into major decisions regarding the children. Major decisions include, but are not limited to, issues regarding education, religion and health needs. Day-to-day decisions regarding the children are made by the parent awarded physical custody.

**3. Joint Physical and Joint Legal Custody:** The court order states that the children live with one parent part of the time and with the other parent part of the time. A joint physical custody order should reflect a schedule denoting when the children are with each parent. The order **MUST** reflect which parent's household is to be used to determine the school district where the children will be enrolled.

## **CHANGE OF CUSTODY**

### **Consent**

If parents agree to a change of custody, a [consent order](#) changing custody may be submitted. A motion to change custody is not required to be filed if parties agree to a change of custody. The consent order must reflect whether the change of custody is temporary or permanent and address ALL issues regarding custody (legal and physical), parenting time, support, insurance and uninsured medical obligations. The order must also reflect which parent's residence is to be used to determine the school district in which the child (ren) whose custody is being changed will attend. The order must also reflect the custodial status of other children of the parties. Most parents retain attorneys to prepare change of custody motions and orders, as the Friend of the Court cannot give legal advice. Consent Temporary Change of Custody forms & [instructions](#) are available at the Friend of the Court Office and on the website. If the parties cannot agree to a change of custody, a motion must be filed.

### **Dispute Custody**

Custody is disputed when a disagreement exists regarding the custodial arrangement and the matter is brought before the court. A custody dispute may occur prior to a final custody order being entered or when on parent petitions the court to change custody from an existing order. If a parent is requesting a change in a current custody order and there is no agreement, [a motion for change of custody](#) must be filed. An affidavit alleging change of circumstance or proper cause must be filed with the motion. A \$100 filing fee is required to be paid to the County Clerk at the time of filing a motion for change of custody. Special rules apply if a parent is serving active military duty.

Once a motion for change of custody has been filed, a referee hearing will be scheduled for a recommendation as to whether a change of circumstances or proper cause threshold has been met. The referee may recommend dismissal of the motion if sufficient change of circumstances or proper cause has not occurred. If the referee determines that there is a sufficient change of circumstances or proper cause, a referral for custody investigation will be recommended. Either party may object to the recommendation made by the referee in writing within 21 days and the issue of change of circumstances, and custody motion referral or dismissal,--- will be set before the Judge.

If a Court finds that there is sufficient change in circumstances or proper cause to investigate custody, an order of referral for a custody investigation will be entered. The matter will then be investigated and a report and recommendation prepared by a Friend of the Court Judicial Domestic Specialist. The report will address custody, parenting time and child support. A copy of the report and recommendation will be provided to each party and attorney of record. The parties may motion for an Evidentiary hearing if a change in circumstances or proper cause has been established. The court will determine if the report and recommendation may be submitted into evidence at a custody trial. A recommendation **DOES NOT** change custody. An order **MUST** be signed by the Judge for any change in custody to take effect.

## **Burden of Proof**

If there is not an established custodial environment, custody is determined by a PREPONDERANCE of the evidence using the custody factors. If there is an established custodial setting, and a motion for a change of custody has been filed, a change of custody is ordered ONLY after proof by CLEAR AND CONVINCING evidence that it is in the best interest of the minor child to change the ESTABLISHED CUSTODIAL ENVIRONMENT---

## **Factors the Court Must Consider in Determining Custody**

In deciding the custodial arrangement in disputed custody matters, the Court must consider all of the factors of the Michigan Child Custody Act. (MCL 722.23). The factors are as follows:

- The love, affection and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of competing 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.
- The capacity and disposition of competing parties to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the law of this state in place of medical care, and other material needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home or homes.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school and community records of the minor child.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- 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 parents.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- Any other factor considered by the court to be relevant to a particular child custody dispute.

The Judge may give each factor greater or lesser weight than other factors when making a custody decision.

## **IV. PARENTING TIME (formerly called visitation)**

Michigan law establishes that minor children have the right to a relationship with both of their parents. Parenting time is the right for a non-custodial parent and children to spend time together when the Court has placed physical custody with the other parent.

An order may grant “reasonable” rights of parenting time. This gives parents a chance to work out a comfortable schedule by agreement. Parenting time may change as a child becomes older or if one parent moves away. “Reasonable” rights allow parents to make these changes by agreement without going to Court. However, a court order granting only “reasonable” parenting time does not resolve any issue when parents cannot agree. The Court and Friend of the Court cannot enforce parenting time terms that are not provided in an order. If a court order grants only “reasonable” parenting time and the parents cannot agree to a schedule, a motion must be filed to set a specific parenting time schedule. Therefore the order should provide for specific parenting time to take place in the event of a dispute. An order may grant “reasonable rights of parenting time by agreement of the parties and if there is no agreement, the standard (typical) Friend of the Court schedule, which includes 78 overnights, is to be followed”. This provision allows parents to agree to any parenting time schedule that meets their needs and resolve issues if they cannot agree. (See the Standard Parenting Time Schedule included with this Handbook) A court order may provide for specific parenting time that is different than the standard schedule.

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 or referee may consider when determining the frequency, duration, and type of parenting time to be granted. MCL 722.27a (6).

### **Friend of the Court “Typical” Parenting Time Schedules**

If parties are unable to work out parenting time, the Friend of the Court may recommend a “typical” schedule. A “[typical](#)” schedule has been determined for parents living within 200 miles and a “[typical](#)” [long distance schedule](#) for parents living more than 200 miles apart. (See the hand-out captioned St. Clair County Friend of Court Parenting Guideline)

The schedule for parents living less than 200 miles apart designates which [week-ends with father and which are with mother](#). (Also see wallet card reflecting weekends inserted on last page of the booklet). Both schedules specifically reflect holidays/school breaks and summer weeks the children are to be with each parent.

### **HOLIDAY, SUMMER AND EXTENDED PARENTING TIME BREAKS TAKE PRECEDENCE OVER OTHER SCHEDULED PARENTING TIME.**

Whenever a more specific holiday (i.e. Mother’s Day), summer, or extended parenting time is scheduled, it takes precedence over any regularly scheduled parenting time. When the holiday, summer or extended parenting time concludes, the regular alternating weekend schedule will resume as if it had not been interrupted.

The Friend of the Court may recommend a different schedule. A recommendation is based on many factors including the past parent-child (ren) relationship, the age, and developmental needs of the child (ren), the location of each parent’s residence and consideration of any special circumstances.

### **Parenting Time Guidelines**

1. A one-half hour UNAVOIDABLE delay grace period is allowed for picking up and returning the minor child (ren). When an unavoidable delay occurs, immediately contact the other parent.

**2. SUPPORT AND PARENTING TIME ARE NOT DEPENDENT ON EACH OTHER UNDER THE LAW. IF YOU ARE THE NON-**

**CUSTODIAL PARENT AND ARE HAVING PROBLEMS WITH PARENTING TIME, YOU MUST STILL PAY SUPPORT. IF YOU ARE THE CUSTODIAL PARENT AND NOT RECEIVING CHILD SUPPORT, YOU ARE STILL REQUIRED TO ALLOW PARENTING TIME.**

3. Make-up parenting time will be allowed only when the non-custodial parent is denied parenting time due to the non-availability of the minor child (ren). The non-custodial parent is not entitled to make-up parenting time when time is missed due to conflict with his/her schedule. A request for make-up parenting time must be submitted to the Friend of the Court Office, in writing, within 56 days after the parenting time has been denied. Parenting time complaint forms are available at the Friend of the Court Office and on the Website.

Parenting time is your child's right. Responsible parents will put their differences aside and see to it that parenting time occurs regularly.

**Parenting time guidelines for the non-custodial parent**

- Be on time. If you are more than one-half hour late, the custodial parent does not have to wait and you will not be entitled to make-up parenting time.
- Spend parenting time with your child (ren). Too often children are left with relatives, boyfriends, girlfriends, spouses, etc. Your child (ren) needs time with you. Consistent parenting time is very important.
- Parenting time does not have to be a constant round of movies, ball games, restaurants, etc. Do some quiet or casual things with your child (ren).
- Return all items sent, e.g. clothing, gifts, medication, etc. at the end of the parenting time.
- If your child (ren) is taking medication, make sure it is given at the proper time in the proper dosage.
- If your child (ren) becomes ill, take appropriate action and contact the other parent.
- During parenting time, do NOT tell your child (ren) you will have custody someday. If you feel a change is in order, take the proper legal steps. DO NOT discuss custody, parenting time or support issues with your child (ren).
- If you are denied your court ordered parenting time, you must submit a written complaint to the Friend of the Court within 56 days of the denial.
- If you do not have a valid driver's license, a responsible licensed relative or friend must do the driving for parenting time transportation.

**Parenting time guidelines for the custodial parent**

- Do everything possible to encourage parenting time.
- Let your child (ren) enjoy and have fun being with the other parent. Do not make your child (ren) feel guilty for loving both of their parents.
- Let your child (ren) enjoy gifts from the other parent.

- If your child (ren) is on medication, be sure to send the medication and instructions.

- Understand that under certain circumstances, it may be necessary for another person to drive your child (ren) for purpose of parenting time. Also, child care may be provided by another person during parenting time.

Model Handbook – Parenting Time Guidelines can be found at the Michigan Supreme Court’s web page (<http://www.courts.michigan.gov/scao>).

### **Parenting Time Enforcement**

The Friend of the Court is required to provide enforcement services for parenting time orders.

The Friend of the Court initiates enforcement by sending a copy of a written (complaint submitted by the parent alleging violation of a custody or parenting time order) to the accused party within 14 days of when the office receives the complaint. A complaint alleging violation of a parenting time order must be submitted to the Friend of the Court Office within 56 days of the alleged violation. The parent accused of violating an order has 21 days from the date the complaint is mailed from the Friend of the Court Office to respond to the complaint. The Friend of the Court will take further action if it is determined that the alleged violation can be addressed by statutorily established actions. By statute, the Friend of the Court may apply a make-up parenting time policy, start an action (before a referee or Judge) requiring the party to show cause why the court should not find the party in contempt of its order, schedule a hearing for modification of existing parenting time provisions, schedule mediation, or schedule a joint meeting with the parties. There is no fee to enforce a parenting time order. (See Make-Up Parenting Time Policy included with this Handbook.)

The Friend of the Court will not respond to an alleged violation if it occurred more than 56 days before the complaint is made, 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, or if the complaint is not a violation of the court order.

### **Modification of Parenting Time Orders**

If both parents agree to change the parenting time order, they may execute a consent order for a specific parenting time schedule. Consent orders are available at the Friend of the Court office and on the website.

If parents do not agree to change a parenting time schedule, either party may file a [motion for a change in the parenting time order](#). The motion and [instructions](#) are available at the Friend of the Court office and on the website. A \$100 fee is required to be paid to the County Clerk at the time the motion is filed. A party may also contact an attorney to prepare and file a motion to modify a parenting time order. A referee hearing will be scheduled when a motion is filed to modify a parenting time order. The referee will make a recommendation which will be reflected in a proposed order and sent under the 21 day objection procedure. If neither party files objections to the proposed order, the order will be signed by the Judge and parties are to follow that court order. If either party files an objection to the proposed order reflecting the recommendation of the referee, within the 21 day period, the issue will be set before the Judge. The parenting time schedule will not change until the Judge makes a final determination.

### **Parenting Time Credit (Abatement)**

For orders entered prior to October 1<sup>st</sup>, 2008, the Michigan Child Support Formula allows a general care child support account credit when the non-custodial parent has the children for six consecutive overnights or longer. Orders entered on or after October 1<sup>st</sup>, 2008, do not include this provision since parental offset is included in the Support Formula. If the order allows for abatement, the non-custodial parent should report the dates promptly, in writing, to the Friend of the Court at the conclusion of the parenting time period. These dates will be confirmed with the custodial parent and credit then given on the account. If the dates are disputed, a referee hearing may be scheduled. Your court order will specify the amount of credit to be received. Orders entered prior to October 1<sup>st</sup>, 2008, allow a 50% credit, unless otherwise ordered. The new 2008 formula is based on parental time offset which eliminates parenting time abatements and the shared economic responsibility formula. When a credit has occurred, do not request that your employer adjust your withholding order reflecting a 50% reduction. Contact the Friend of the Court and instructions will be given with regard to handling the credit on your particular case. [Parenting time abatement requests](#) should be submitted within 6 months from the conclusion of the parenting time and if not submitted within one year, abatement will not be given.

### **100 Mile Law**

Parents awarded joint legal custody of a minor child who resided less than 100 miles from each other at the time the order was entered, shall not change the legal residence of the child more than 100 miles from the other parent unless the other party gives written [consent](#) or permission has been granted by the court. (Each parent's residence is considered a legal residence of the child for purpose of this provision.) If the other parent does not agree, a [motion to change legal residence must be filed](#). A filing fee of \$100 is required to be paid to the County Clerk at the time of filing a motion for change of legal residence. Consent orders and motions are available at the Friend of the Court Office and on the website.

### **Change of Domicile**

The domicile (permanent residence) of a minor child may not be moved from the state of Michigan without the consent of the other parent or permission of the court. This provision refers to the domicile of the parent awarded physical custody or each parent if awarded joint physical custody. If parents do not [consent to a change of domicile](#), a [motion to change domicile](#) must be filed. A filing fee of \$100 is required to be paid to the County Clerk at the time of filing a change of domicile motion. A parenting time schedule will be reflected in the order if a change of domicile is granted. Consent orders and motions are available at the Friend of the Court and on the website.

### **Grandparent Visitation**

Pursuant to statute effective January 3, 2005 (Act No. 542, Public Acts of 2004) Grandparents must file an action in Circuit Court for grandparent visitation.

### **V. SUPPORT**

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

Support may include:

- Child support
- Spousal support/Alimony
- Obligation to pay a portion of premiums to insure the minor children
- Obligation to pay a portion of uninsured medical expenses
- Obligation to pay portion of confinement expenses (these are ordered when there are uninsured expenses for the cost of a birth of a child of unmarried parents)
- Obligation to pay a portion of child care expenses

### **Support Obligation**

All non-custodial parents are required to pay support (whether mother or father) unless the custodial parent has waived the right to support and is not receiving state assistance.

ALL support obligations MUST be reflected on the State Court Administrator Office approved Uniform Support Order forms. Child support is reflected on either [Uniform Child Support Order](#), FOC 10/52 (7/08) or [Uniform Child Support Order – No Friend of Court Services](#), FOC 10a/52a (7/08).

All support obligations must be stated in a monthly amount for each obligation which will charge on the first day of each month. When an order is effective on a day other than the first day of the month or ends on a day other than the last day of the month, the support amount will be pro-rated for the partial month. Support is to be paid in accordance with the payer's pay schedule (i.e., if paid weekly, support must be paid weekly; if biweekly, support is paid bi-weekly). Support is past-due if it is not paid by the last day of the month in which it charged.

All provisions of a support order MUST be complied with. DO NOT make private arrangements – it is possible that credit for payments made directly will not be given.

The support provisions of an order define the legal obligation to support children. Of course, parents can do more for their children but court orders MUST be complied with FIRST.

Giving \$30 worth of clothing to your child (ren) is NOT a substitute for a \$30 child support payment. If you wish to buy clothing, toys, etc., that purchase is a gift and credit will not be given on the child support account unless the custodial parent agrees to give credit. You are obligated to pay your court ordered child support even if you have purchased additional items for the child (ren).

Michigan law requires that the Michigan Child Support Formula be used to determine child support obligations. The Formula MUST be used by the Friend of the Court when making recommendations for child support. The Formula takes into consideration the incomes of both parents, the number of parenting time overnights and allowable deductions. A deviation from this Formula calculation requires that the Formula amount be reflected in the order and the Judge state a clear reason in writing or on the record why using the formula is "unjust or inappropriate". For more information about the October 1<sup>st</sup>, 2008 child support formula, see the support manual, and its supplement at: <http://courts.michigan.gov/scao/services/focb/mcsf.htm>

Support remains in effect until the child (ren) turns 18 or graduates from high school, whichever is latest, but no longer than age 19.5.

### **Child Support – General Care Obligation**

Child support is calculated using both parents' incomes and the number of parenting time overnights. Incomes of other spouses are not used. Support calculated as payable to a third party DOES NOT include income of the third party. Each parent may have a court ordered obligation to a third party. Certain adjustments and deductions are allowed by the Formula. Included in a general care support obligation is an allocation of payer's share of the cost to insure the minor children on this case.

### **Responsibility to Insure**

The Formula requires that a determination must be made regarding availability of insurance at a reasonable cost for the minor child (ren) for each parent. If it is determined that insurance for the minor children is available at a reasonable cost that insurance MUST be obtained by the parent. The determination may result in neither, either or both parents being ordered to obtain insurance. If circumstances change and insurance becomes available at a reasonable cost to a parent, that parent should obtain that insurance. A motion must be filed or review of support requested (if 3 years has passed since last order was entered) in order to have an insurance premium adjustment applied to the support order.

### **Insurance Cost**

Once the determination is made as to who must obtain insurance for the minor child(ren), the total monthly premium cost is determined. This cost is then apportioned accordingly to the uninsured medical percentages reflected in your order. (i.e. if the total monthly cost to insure the minor child (ren) is \$100 and payer is ordered to pay 60% and payee 40% of uninsured medical costs, the payer would be required to pay \$60 and payee \$40 of the insurance premium). A determination is then made as to how much each parent is actually paying for insurance and the payer's portion is either added to or deducted from payer's general care child support obligation. (i.e. if the payer in the above example was paying \$50 per month for insurance, an additional \$10 would be added to payer's child support; if payer was paying \$75, \$15 would be deducted from the obligation). Each parent is required to pay a portion of the cost to insure the minor child(ren).

### **Medical Obligations**

The Formula requires that a percentage apportionment be calculated to reflect the obligation for each parent for uninsured medical costs based on each parent's adjusted net income. These percentages are used to determine each parent's share of premiums to insure the minor child(ren) on a case and uninsured health care expenses (including uninsured confinement expenses on family support actions).

### **Ordinary Uninsured Health Care**

In addition to general care child support, the Formula requires that an additional obligation charge each month to address "ordinary" uninsured health care expenses for the minor child(ren). These expenses include deductibles, co-pays, prescriptions, etc. The Formula reflects that \$345 per year per child is spent in uninsured health care expenses. This results in a monthly expense of \$28.75 per child. Payer is required to pay the uninsured medical expense percentage calculated in the order on a monthly basis in addition to general care child support. (i.e. if payer is required to pay 50% of uninsured medical, \$14.38

per month would charge in addition to general care child support). Parenting time abatement is not given on the ordinary health care portion of the account.

### **Extraordinary Uninsured Health Care**

The support order requires parents to share ALL uninsured health care expenses for the minor child(ren) in accordance with the uninsured medical percentages. For orders entered October 1<sup>st</sup>, 2008, the FIRST \$345 per year PER CHILD is charged on the account as reflected above. Orders entered prior to October 1<sup>st</sup>, 2008 use the base amount of \$289 per year. The payee may request enforcement of uninsured expenses incurred in excess of \$345 per year per child. Pursuant to the Formula, the custodial parent MUST maintain annual ordinary health care expense amounts for the minor child (ren) (with copy of bill from date of service & explanation of benefits if available) to reflect that the total expense of \$345 per year per child for ALL children on the order has been met before any additional bills may be submitted to payer for reimbursement. The [medical accounting form](#) is available at the Friend of the Court Office & the website to assist payee in keeping records to reflect that the \$345 per year per child expense has been met. The custodial parent may NOT seek reimbursement for extraordinary uninsured medical expenses for any of the children until the TOTAL combined for ALL children in the case exceeds \$345 per child. (\$345(1); \$690(2); \$1035(3); \$1380(4); \$1725(5 or more)). A TOTAL amount is required to be spent based on the number of children on the case. The required total could be incurred on behalf of one child that meets the total required for the number of children on the case. (i.e. - if there are two children on the case, a total of \$690 must be spent in uninsured expenses before extraordinary expenses will be enforced. That total could have been spent on only one of the children or a combination of the two).

### **Confinement Expenses**

In family support cases where parents were not married at the time a child was conceived and born, payer is ordered to pay a portion of uninsured medical expenses for reasonable and necessary expenses for the delivery and confinement expenses. This obligation shall charge at the rate of \$25.00 per month until the total amount owed is charged.

### **Child Care**

The Formula also provides that a non-custodial parent pay a portion of work-related child care expenses incurred by the custodial parent. Work-related child care expenses include those child care costs which allow the parent to look for employment, retain paid employment, or to enroll in and attend an educational program. Both parents are required to inform each other and the Friend of Court of any changes in child care expenses. Payer's child care obligation is calculated based on each party's income and verified out-of-pocket child care expenses. (Federal child care credit is factored into the calculation). Child care is calculated on a pro-rated yearly basis and charged monthly as a separate obligation. Parenting time abatement is NOT given on the child care account (as only the weeks child care expenses are incurred are factored into the calculation). Child care may be ordered until August 31<sup>st</sup> immediately following the 12<sup>th</sup> birthday of the child or until child care expenses cease.

### **Stopping support obligation when minor child (ren) resides with payer.**

Child support obligations will stop if a minor child (ren) reside(s) full-time with the payer of support. The Friend of the Court must be notified in writing of this change of residence of minor child (ren). Support will not be ordered from the other parent unless a change of custody order is entered and support is requested. The prior support order will be re-instated if the minor

child (ren) return(s) to reside full-time with payee. A written request to re-instate the support order must be submitted to the Friend of the Court.

### **Spousal Support/Alimony**

Spousal support/alimony is for the support of the other party on the case. The Friend of the Court makes recommendations for spousal support in response to an order of referral and enforces the payment of spousal support upon written request.

ALL support obligations MUST be reflected on the State Court Administrator Office approved Uniform Support Order forms. Spousal support is reflected on either [Uniform Spousal Support Order](#), FOC 10b (7/08) or [Uniform Spousal Support Order – No Friend of Court Services](#), FOC 10c (7/08).

### **Arrears Payments**

If an arrearage exists, the Formula requires the payer of support, in addition to all current charges and fees, to make monthly payments on the arrearage in the amount of 2% of the total support amount due, but not less than \$50, or more than half the current support charge amount. If no support charge amount exists, then the monthly repayment amount is the last ordered charge amount.

### **Surcharge/Service Fees**

The payer of support is required to pay service fees as required by law. In addition, the payer of support is required to pay surcharge on ALL support arrears as required by law.

### **Payment of Support**

Michigan law requires that every support order provide for immediate and automatic withholding of support payments from any source of the payer's income. A source of income is an employer or any other person or entity that owes or will owe income to the payer. All support orders MUST contain automatic withholding language even if there has been no history of arrears. Parties may opt out of this requirement only after a waiver is signed by the custodial parent and a determination made that the custodial parent is not receiving state assistance (including TANF and/or Medicaid).

A copy of the order to withhold sums shall be served upon the payer's source of income. The employer shall forward court ordered withholding amounts directly to the Michigan State Disbursement (MiSDU) in the total amount, if applicable, of the monthly support (child support and/or spousal support), child care, medical, arrears calculated pursuant to the Formula and statutory fees.

Current law requires employers to send support payments to the Michigan State Disbursement Unit in Lansing. All payments must include the following information:

1. County No. 74
2. Employee Name
3. Employee Social Security Number
4. Docket Number (upper right hand corner of notice)
5. Amount Withheld

## 6. Date of Withholding

If the amount withheld by an employer is less than the ordered amount of support (including arrears and service fees), the payer shall make up the difference by paying directly to the MiSDU with a [coupon](#) unless directed by the Judge or Referee to make a special payment in cash to the Friend of the Court office. If no withholding order is in effect, the payer MUST forward court ordered payments to the MiSDU with a coupon.

### **Allocation/Distribution**

All payments received through the MiSDU will be applied to accounts according to current law. Payments are forwarded to the custodial parent on the date that they are processed. If a payer had more than one case, all currently charging obligations will be paid before any arrears on any account is paid. The custodial parent will receive the entire monthly court ordered support obligation as it is received. This may result in larger payments in the beginning of the month than at the end. Once all charging monthly obligations have been paid, money will then be applied to arrearages owed on payers' cases. Payments are allocated in proportions to the amounts owed on each case. Arrears payments are applied to payees first and then to state arrears.

### **Redirection of Support**

Child support may be redirected to a 3<sup>rd</sup> party with legal status (Guardianship, placement by Probate Court). Support will NOT be redirected to a third party if they do not have legal status.

### **Enforcement of Support**

The Friend of the Court enforces support orders. The process begins automatically through the current computer system or by [written request](#) (signed and dated) for enforcement from the payee.

The Friend of the Court staff reviews all complaints. The Friend of the Court may decide that no action is necessary (a substantial payment may have been received since the filing of the complaint; payee may be in jail, etc.) A delinquency notice or letter may be sent.

If a delinquency notice is forwarded and there is no response from the payer, an enforcement hearing will be scheduled before a referee.

The referee will attempt to settle the support issue. Settlements are reached by securing substantial payments on the arrearages, issuing an income withholding order or other arrangement to enforce the support order.

A proposed order will be prepared reflecting the recommendation of the referee and sent to both parties with 21 days to object. If there is an objection filed by either party, the enforcement issue will be continued with a show cause hearing before the Judge. If no objection is filed, the payment plan order will be signed by the Judge and will be enforced by the Friend of the Court.

The payer MUST appear at the Friend of the Court referee hearing (or call at the time of the hearing if payer proves unavailability due to long-distance, illness, mandatory work schedule, etc.). Notice sent for the hearing is a show cause order signed by the Judge requiring the payer's personal appearance. Failure to appear for the hearing (or call at time of the hearing) will result in a [bench warrant](#) being issued for the payer's arrest. Incarceration may result when arrested on the bench warrant. Incarceration for failure to pay support does NOT cancel arrears or child support charging.

The Payer MUST appear if an enforcement show cause hearing is scheduled before a Judge. A party may NOT call for a hearing before the Judge. Failure to appear before the Judge WILL result in a bench warrant issued for payer's arrest.

### **Common Errors Made by Payers**

1. Failure to include extra sums for the service fees.
2. Failing to recall that payments were not made during vacations or other periods (lay-offs, strikes, etc) and extra sums were not sent in at a later date to catch up on any missed payments.
3. Failing to pay support when child (ren) spent time with the paying parent (parenting time). Very few orders provide that support will stop during parenting time. Orders entered prior to October 1<sup>st</sup>, 2008 provide that the payer will receive a 50% retroactive credit once that person has had the child (ren) six consecutive overnights. This does NOT mean that a payer may send in only one-half of the ordered child support. The payer must write the Friend of the Court Office or [submit the web form](#) with the dates that the children (ren) were with him/her. The Friend of the Court will confirm those dates with the custodial parent. Therefore, if credit is to be given, the Friend of the Court will adjust its records.

### **Credit Bureau**

Michigan law now requires support arrears to be reported to the credit bureau. Arrears in excess of 2 months currently charging support or \$1,000 if case is arrears only will be reported to the credit bureau.

### **Passport Denial**

Current law requires that applications for passports be denied if \$2500 or more is owed in arrears.

### **License Suspension**

Under certain circumstances various licenses, (including driver's, professional, hunting and fishing) may be suspended if so ordered by the Court.

### **Felony Warrant**

Under limited circumstances a payer who owes large child support arrears could be subject to state or federal felony prosecution. Felony prosecution is at the discretion and initiation of state or federal prosecutors.

### **Liens**

Liens exist by operation of law against a payer's real and personal property, including accounts with financial institutions, if arrearage exceeds the amount of periodic payments payable for two months under the support order, and the payer's real and personal property can be encumbered or seized. A payee requesting a lien must provide all information needed to pursue filing a lien, including but not limited to, location and description of the property.

### **Health Care Enforcement**

If the current support order does not reflect monthly charging for Ordinary Health Care Expenses, uninsured expenses are due and payable as they accrue. The custodial parent is to provide the non-custodial parent with a copy

of the bill and explanation of benefits from any source of insurance. The non-custodial parent is to pay the portion of the uninsured expense as reflected in the support order. Payment is to be made to the custodial parent or the medical care provider. If the payer does not pay uninsured expenses as required, the custodial parent may submit the bill to the Friend of the Court for enforcement. [Requests for enforcement of uninsured medical bills](#) should be submitted within six months from the date of service. Medical bills submitted more than one year from the date of service will not be processed.

If your current order reflects a monthly charging amount for Ordinary Health Care Expenses, medical bills may be enforced as reflected above but ONLY upon [proof](#) by the custodial parent that \$345 (for orders entered after October 1<sup>st</sup>, 2008, and \$289 for orders prior to October 1<sup>st</sup>, 2008) per year per child has been spent. (See Medical Obligations – Ordinary and Extraordinary in this handbook).

An order for medical cost reimbursement is considered a form of child support and the Friend of the Court is required to assist in the collection of these costs. Parties can help enforce medical cost reimbursement by adhering to the following:

1. Medical reimbursement requests must be submitted on the Friend of the Court [Request for Extraordinary Health Care Expense Payment form \(#1\)](#), after all sources of insurance coverage have been exhausted. Explanation of Benefit forms from insurance companies should be attached as well as copies of all bills.

2. The Request for Extraordinary Health Care Payment form must first be submitted to the Obligor. If payment is not received from the Obligor within 14 days, the third page of the [Request for Extraordinary Health Care form](#), titled Complaint for Enforcement of Extraordinary Health Care Expenses, must be completed.

3. All Requests for Extraordinary Health Care Expense Payment forms should be submitted to the Friend of the Court within 6 months from the date of service. Medical bills over one (1) year old will not be processed.

4. The Friend of the Court will forward the Request for Extraordinary Health Care Expense Payment form to the Obligor who will have 28 days to file a valid objection. If no objections are received, the amounts due by the Obligor (if payer on the support account) will be added to a medical account. If Obligor is payee on the account, the account will be adjusted.

5. Once a Demand for Medical payment form is received, all medical payments must be made to the MiSDU if owed by the payer on the account.

### **Insurance Enforcement**

Michigan law requires each child support order to contain a clause regarding medical insurance. The order reflects a determination as to who must provide medical insurance for the minor child (ren) based on circumstances at the time the support order was calculated. Parents are required to obtain and/or maintain health care insurance for the child (ren) if that coverage is available at a reasonable cost as a benefit of employment. St. Clair County has a Local Administrative Order in place that defines reasonable cost for health care coverage that does not exceed five percent of the gross income of the providing parent.

If insurance is obtained at a reasonable cost by either parent after the support order has been calculated, that parent must file a motion or request a

review (if 3 years has passed since the order was entered) to have the cost of insurance factored into the child support calculation/order.

The Friend of the Court requires that specific information be submitted which includes:

1. Name of insurance Company
2. Name of Policy Holder
3. Name of Employer if insurance provided through employment.
4. Claim address
5. Group Number and/or Policy Number
6. Effective Date of Coverage for Dependents
7. Type of Coverage such as medical, dental, optical, and/or prescription

([Health insurance information forms](#) are available at the Friend of the Court office).

If a parent is required to provide coverage for the child (ren), has coverage available through employment, and fails to provide coverage, the Friend of the Court will send a medical support notice to the parent's employer. The employer is then required to deduct premiums for coverage.

### **Modification of Support**

The Friend of the Court will review child support orders once every three years (36 months), automatically in public assistance cases (full grant or Medicaid), and upon [written request](#) in all other cases. A motion to review support may be filed by either party (or through an attorney) any time there is a change in circumstances.

### **Threshold for Modification**

A minimum threshold must be met in order to change a child support order. The difference between the current support amount and the proposed support amount must be 10% or \$50.00 per month, whichever is greater, before the Friend of the Court will petition the court and recommend a change in the support order. If the minimum threshold is not met, the Friend of the Court is not required to petition for a change of the support order.

There are 3 ways to change a currently charging support order:

1. Agreement: Parties may agree to a change in the support order if the custodial parent is not receiving state assistance of any kind (TANF grant, Medicaid, food stamps, child care, etc.). (Parties CANNOT deviate from the Formula if state assistance of any kind is being received). Forms are available at the Friend of the Court office. An agreement must include support amount deletions, number of parenting time overnights, insurance responsibility, ordinary health care obligation and uninsured medical expense percentages. Arrears must also be addressed; whether to preserve or eliminate arrears owing to the payee and payment if arrears are preserved. All arrears owed to the state are preserved and the amount of payment obligation must be reflected in the order. An effective date of the change in support is also required.

2. **Motion:** A [motion](#) can be filed with the St. Clair County Friend of the Court at any time. However, there **MUST** be a **CHANGE IN CIRCUMSTANCES** to modify support. An order will not be changed unless the minimum threshold for change of support has been met. There is a filing fee of \$60 which must be paid to the St. Clair County Clerk at the time the motion is filed. The matter will then be scheduled for a referee hearing. An increase or decrease in support resulting from a motion will be effective retroactive to the date the motion fee is paid. A motion may be filed with or without an attorney.

3. **Review:** A support order will automatically be reviewed by the Friend of the Court in public assistance cases (Medicaid or full TANF grant) or upon [written request](#) once every three years (36 months). Upon receipt of a written request or automatic review, a recommendation will be made regarding support amount. The effective date for a modification of support as a result of a review is the first of the month following the date a new support obligation is calculated. There is no fee for a review but the change in support will not be retroactive to any day prior to the first of the month following calculation of the new support amount. (Filing a motion allows retroactive modification to the date a motion is filed; a request for a review does not).

A consent order for modification may be signed if the parties agree. If there is no agreement after a review (either referee hearing or investigation), a proposed order reflecting the Friend of the Court recommendation will be sent to the parties with 21 days to object. If an objection is filed by either party, the proposed order will be set on for entry before the Judge. If no objection is filed, the order will be signed by the Judge. If the moving party has retained an attorney, that attorney must prepare an order reflecting the recommendation.

### **Retroactive Modification of Support**

Michigan law does not allow a retroactive modification of support unless a motion has been filed. An incarcerated payer **MUST** request a modification/abeyance of a support order. Incarceration credit will **NOT** be given upon release as this is considered a retroactive modification of support. The only exception to the non-retroactive modifications of support was created January 1, 1997 which allows the court to modify support retroactively where a party knowingly and intentionally fails to report, or knowingly misrepresents income that was required by the court to be reported to the Friend of the Court.

A recommendation **DOES NOT** change a support order. A new order **MUST** be entered to change a current order.

**REMEMBER** – When a change to an order is needed, you **MUST** take one of the steps explained above. **NOTIFYING THE FRIEND OF THE COURT** that you have lost your job, have been laid off or injured **DOES NOT** change your order.

## **VI. MISCELLANEOUS**

### **Fees**

All fees are subject to change. Fees are established and can be changed at any time.

### **Bankruptcy**

Filing bankruptcy does **NOT** discharge the obligation to pay support and arrears. Payment of support may be included in a bankruptcy plan. Enforcement of current support may be done while a bankruptcy is pending; however, enforcement of arrears cannot be done at this time.

## **Parent Locator/Data Warehouse**

The State and Federal government have a parent locating service and maintain a data warehouse which can be used to locate a parent.

To use the parent locator service, please provide the following information: The full name, date of birth, social security number and last known address of the absent parent.

## **Income Tax Intercept**

Federal and State income [tax refunds are automatically intercepted](#) and applied to support arrears if statutory thresholds are met. Federal income tax refund is automatically intercepted if there is an arrearage of \$500. State income tax refund is intercepted if there is an arrearage of \$150. If an account is no longer charging but there are arrears of over \$500, State income tax refunds will be intercepted. If a payer is married and files jointly, refunds CANNOT be forwarded to a payee for a six month period as an [Injured Spouse](#) claim may be filed and the refund amount owed to payer reduced. If a payer agrees, intercepted income tax refunds may be applied to service fees due and owing after all support arrears have been paid in full. By state mandate, refunds are applied to state obligations first and then obligations owed to the payee.

All tax questions are to be referred to the [Internal Revenue Service](#). All questions regarding disbursement of income tax refunds are to be made to the MiSDU.

## **Direct Payment Credit**

Direct payment credits should be given on the account for all payments made directly to the payee until entry of the support order. After entry of the support order, all payments must be made in accordance with the order. Direct payment may not be given if a TANF grant is being received at the time of a direct payment as that support is owed to the State of Michigan. Direct payment of uninsured medical obligations may not be given if the custodial parent was receiving Medicaid at the time the uninsured expense was incurred and ordinary health care arrears are owed to the State. All [direct payment credit requests](#) over \$100 must be notarized.

## **Opt Out**

Parties are not required to use the services of the Friend of the Court. Parties may file a motion to “Opt Out” of the Friend of the Court. Opting out of the Friend of the Court does not eliminate the obligation to pay support. The obligation is simply not paid or enforced through the Friend of the Court. Parties may elect in initial pleadings to opt out of the Friend of the Court. The court may find the following:

1. There is no evidence of domestic violence or unequal bargaining position between the parties.
2. Granting the parties the relief they have requested would not be against the best interests of any child in the case.
3. The parties have filed executed copies of the [Advice of Rights](#) form advising them of the services they will not receive if their motion is granted.
4. Neither party receives a full TANF grant or Medicaid for a child on the case.

5. No money is due to the state because of past public assistance for a child in the case.

6. No arrearage or custody or parenting time order violation has occurred in the last 12 months in this case.

7. Neither party has reopened a Friend of the Court case in the last 12 months.

The [Advice of Rights](#) form and [Order Exempting Case from Friend of the Court Services](#) is available at the Friend of the Court office. If parties have opted out of the Friend of the Court, either party may request reinstatement of the order through the Friend of the Court Office. If a case is reopened after [opting back in](#), the case must remain with the Friend of the Court for one year. If a full TANF grant or Medicaid is received on behalf of a minor child of the case, the case will automatically be reopened in the Friend of the Court.

### **Stopping Support**

Parties intending to stop the support obligation completely may consent to an order stopping support but only if the payee is not receiving a TANF grant and/or Medicaid. Consent orders stopping support are available at the Friend of the Court Office. Parties wishing to continue a support obligation but not charge through the court system MUST Opt Out of Friend of Court services. Parties CANNOT pay support outside of the system and utilize the system for custody, parenting time, modification and/or enforcement services. Parties must either agree to work TOTALLY within or outside of the system.

### **Grievance Procedure**

A grievance procedure is available for complaints regarding office operation or employees in the Friend of the Court office. A grievance form is available at the Friend of the Court office. It is suggested that before filing a grievance you contact the Friend of the Court, as your complaint may be able to be resolved. REMEMBER – THIS GRIEVANCE PROCEDURE MAY NOT BE USED TO DISAGREE WITH THE DECISION OF A JUDGE, THE RECOMMENDATION OF A REFEREE, OR A FRIEND OF THE COURT INVESTIGATION. A JUDGE'S DECISION MUST BE APPEALED AND RECOMMENDATIONS ARE TO BE OBJECTED TO AND A DE NOVO HEARING HELD BEFORE THE JUDGE.

### **Investigations of Alleged Abuse/Neglect of a Child**

The Friend of the Court does NOT have authority to investigate child abuse or neglect, however, the Friend of the Court is required to report suspected abuse or neglect to the Protective Services Unit of the Department of Human Services. If you suspect abuse or neglect, please contact your [local Department of Human Services](#).

### **Access to Friend of the Court Records**

A Friend of the Court file is NOT a public record. ONLY parties and their attorneys are given allowed access to [review a file](#) in their Friend of Court file that is not confidential under the law. A fee is charged for duplication of records from the file.