

**Friend of the Court
Handbook
For
Iron County**

Friend of the Court Bureau/SCAO
Michigan Supreme Court

INTRODUCTION

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

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

This handbook describes the FOC's general duties. Some procedures vary by county. You may discuss any questions regarding local or statewide procedures or requirements with your local FOC office or with your attorney.

To learn some of the common family law and FOC legal terms, please refer to the glossary at the end of this handbook.

The FOC has **no** authority to:

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

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

OPTING OUT OF FRIEND OF THE COURT SERVICES

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

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

- A party is eligible for "Title IV-D Services" because the party receives or has received in the past "public assistance" (please see the glossary for definitions).
- A party has applied for Title IV-D Services.
- A party has asked the FOC to open a case file.
- There is evidence of domestic violence or bargaining inequality, and evidence that the opt-out request is against the best interests of a party or the child.

After the FOC has opened a case, the parties may file an opt-out motion requesting the court to order the FOC to close its file. The court will issue the order unless one or more of the following are true:

- A party objects to the closure.
- A party is receiving public assistance.
- Within the past 12 months, a support arrearage has existed, a custody or parenting-time violation has occurred, or a party has asked the FOC to reopen its case file.
- There is evidence of domestic violence or bargaining inequality coupled with evidence that the request is against the best interests of a party or the child.
- The parties have not filed a document with the court, signed by each party, that acknowledges the FOC services that the parties are choosing to give up.

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

Preliminary Orders

Courts sometimes enter temporary orders that remain in effect only until the parties have an opportunity to present more detailed evidence and arguments at a hearing.

Ex Parte Orders

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

Ex parte orders are usually intended to keep a situation stable until the judge can hear from both parties. A party who disagrees with an ex parte order may file a written objection to the order or file a motion asking the court to change or cancel the order; but the ex parte order will remain in effect until it is changed by the court.

When an ex parte order involves an issue of custody, parenting time, or support, a party may file a written objection within 14 days of the order being issued. If a party files an objection, the FOC will try to help the parties settle the dispute without going to court. If the parties cannot agree, the FOC will provide forms and instructions for unrepresented parties to schedule a court hearing.

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

Temporary and Final Orders

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

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

Even if the parties agree to change a court order, the court and the FOC cannot follow the new agreement until the judge signs a new order that approves the agreement.

Sometimes, the law requires the FOC to ask the court to change an order. See *Parenting Time Enforcement and Modification of a Child Support Order* later in this handbook.

Referee Decisions

A referee is not a judge, but performs some tasks on behalf of the judge who presides over the case. The chief circuit court judge may appoint a referee to hear testimony and arguments on any issue in a domestic relations case except spousal support (alimony). Only a judge may hear testimony and arguments on spousal support.

A referee only recommends a resolution to the judge.

An FOC employee who acts as a mediator may not share information about what happened during mediation, except for what is stated in the parties' signed agreement. The mediator cannot later in the same case, enforce an order, investigate an allegation, or serve as a referee regarding any other issues in that case.

Court Rule Domestic Relations Mediation

The court may refer family matters to mediation under MCR 3.216 if the parties agree, or if the judge orders mediation on a party's motion, or on the court's own initiative.

Unlike the FOC mediation summarized above, court rule mediation is not necessarily voluntary and is not limited to only custody or parenting-time issues. The court may order mediation for any disputed issue. The parties may agree to have the case mediated by any person who has the qualifications specified in the court rule. If the parties cannot agree on a mediator, the court's ADR clerk will assign one from a list of qualified mediators. The person who performs court rule mediation is entitled to a reasonable fee. The parties usually share that expense equally.

Court rule mediation is mandatory. The parties must attend the mediation sessions and they may bring their attorneys. Any information they share with the mediator is confidential.

If the parties reach agreement during mediation, the parties must sign a written agreement. The parties must then have the mediation agreement entered as a court order.

Conciliation

Conciliation is a process in which an FOC employee assists the parties, usually at the beginning of a case, to reach an agreement. Absent an agreement, the FOC employee may prepare a recommendation for a court order. Information gathered during conciliation may be used by the court later in other proceedings.

Joint Meeting

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

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

CUSTODY

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

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

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

Yes. The FOC must give each party or the party's attorney a copy of the report, including the recommendation and a summary of the information used in making the recommendation.

Is there a cost for the custody investigation?

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

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

- You can ask the FOC office to enforce the order.
- You or your attorney may file a motion and ask the court to enforce the order.
- If you believe the other parent will not return the child, you may contact the police or the prosecuting attorney and ask either to file a parental kidnapping charge.

How do I enforce the custody order if the other parent takes our child to another country?

When a child who is a United States citizen is illegally kept outside of this country, the United States Department of State Office of Children's Issues will work with the local U.S. embassy and the other country's government to assist the lawful parent. However, the State Department cannot force the other parent to obey a court order. If the parents cannot reach an agreement, this kind of child custody dispute often must be resolved by judicial proceedings in the country where the child and the other parent are living. The State Department will help the lawful parent file the appropriate documents with the foreign authorities. It also will monitor and report on the foreign judicial or administrative proceedings.

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

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

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

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

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

Can the FOC investigate child abuse or neglect?

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

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

(2) the complaining party previously made two or more complaints that the court found unwarranted and the complaining party has failed to pay the costs assessed in those proceedings; or

(3) the court order does not have an enforceable parenting-time provision.

The FOC starts enforcement by sending a copy of the written complaint to the other party within 14 days after the FOC receives the complaint. If the FOC finds the court's order has been violated, the FOC may:

- Apply "makeup" parenting time.
- Ask the court to decide if the party who is accused of denying parenting time is in contempt.
- File a motion to modify parenting time provisions.
- Schedule mediation, depending on the type of ADR services available in your county.
- Schedule a joint meeting with the parties.

Modification Motions

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

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

Frequently Asked Questions About Parenting Time

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

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

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

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

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

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

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

The forms to change your parenting time are at: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/custody-parentingtime/foc65.pdf> and [http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/custody-parentingtime/foc65.pdf#search="parenting time changes"](http://courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/custody-parentingtime/foc65.pdf#search=parenting%20time%20changes).

The other parent refuses to see our children. What can the FOC do?

The FOC cannot force a parent to see his or her children. To promote a positive relationship with the children and the other parent, you may wish to consider counseling, mediation, or filing a motion to change the parenting-time order.

SUPPORT

The Office of Child Support, the Prosecuting Attorney's office, and the Friend of the Court offices work together with both parents to establish and enforce child support orders.

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

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

All support orders state an amount due on the first day of each month. Support is past due if not paid by the last day of the month. When an order starts after the first day of a month, support is prorated for the partial month. Support will end on the last day of the month stated in the order.

Changing a Child Support Order

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

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

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

Party's Motion to Modify the Support Order

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

SUPPORT ENFORCEMENT

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

Immediate Income Withholding

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

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

- Makes a written finding that income withholding is not in the child's best interests.
- Finds all previously ordered support has been paid on time.
- Requires the payer to keep the FOC informed of the payer's source of income's name, address, and telephone number, and information about any health care coverage the payer maintains or the payer's employer offers.

Contempt of Court (Show Cause Hearing)

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

For more information about contempt proceedings, see *Show Cause Proceedings in Domestic Relations Cases* (PSA 25) at: http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlet_s/focb/PSA25-Text.pdf.

Income Tax Intercept

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

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

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

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

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

If the court does not order health insurance, coverage might be available through MI-Child or Medicaid programs. Find more information about Medicaid programs online at: http://www.michigan.gov/mdch/0,4612,7-132-2943_4860---,00.html.

Intergovernmental Cases

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

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

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

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

For more information, see *The Uniform Interstate Family Support Act (UIFSA) (PSA 29)* located at: <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA29-Text.pdf>.

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

Contact the FOC for help if the other parent is more than one month behind on the support payments. You may also hire an attorney.

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

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

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

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

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

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

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

If you comply with the court's orders (which may include paying off arrearages or setting up a payment plan), you must get a Compliance Certificate for License Reinstatement from the FOC, and pay a \$45.00 fee to the Clerk of Court.

Who do I contact for more information?

For general child support information online, visit the Michigan Child Support website at: <http://www.michigan.gov/childsupport>.

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

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

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

THE FEDERAL IV-D CHILD SUPPORT PROGRAM

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

ACCESS TO FRIEND OF THE COURT RECORDS

May I review my FOC file?

Parties and their attorneys can see most information in their FOC file. There are exceptions for certain confidential documents. *See* MCR 3.218. The FOC may charge a reasonable fee for copying records.

If the FOC office will not let you see its file, you may file a motion asking the court to allow you to see the file. *See* MCR 3.218 (G).

May other persons see my FOC file?

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

ACCESS TO OTHER RECORDS

May I see my child's school, medical, and other records if my child lives with the other parent?

Michigan law gives both parents the right to see certain records including medical, dental, school, and day care records. Both parents are entitled to receive advance notice of meetings that concern their child's education; however, the FOC cannot enforce that law. You may wish to consult an attorney if you are denied any of those rights.

ADOPTIONS, MARRIAGES, AND MILITARY ENLISTMENTS – HOW THEY AFFECT CHILD SUPPORT

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

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

PARENT LOCATOR

Will the FOC help locate a missing parent?

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

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

PATERNITY ESTABLISHMENT

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

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

How do I file a complaint about an attorney?

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

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

GLOSSARY OF FREQUENTLY USED TERMS

Arrearage – The total amount of support payments that are overdue.

Bench Warrant – A court order to arrest a person and bring that person before the court.

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

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

Disbursement – Paying out of collected child support funds.

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

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

Extraordinary Health Care Expenses – The support recipient’s out-of-pocket expenses that exceed the children’s ordered annual ordinary medical expense amount and any uninsured medical expense paid by the support payer.

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

Friend of the Court – In this handbook, “friend of the court” means the office that assists the circuit court’s family division. The office investigates, makes recommendations, and helps enforce court orders that affect minor children. “Friend of the Court” also is the formal title of the person in charge of that office.

Joint Custody – Two types of joint custody may exist together or be combined:

- **Joint legal custody:** The children live primarily with one or both parents, although both parents participate in major decisions affecting the children.

Office of Child Support
1-866-540-0008
(Automated System)

MiChildSupport (24-hour case access)
<https://www.michigan.gov/michildsupport>

Michigan State Disbursement Unit (MiSDU)
P.O. Box 30351
Lansing, Michigan 48909
<https://www.misdu.com>

Michigan Legal Help
<http://michiganlegalhelp.org>