

Friend of the Court Handbook



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TABLE OF CONTENTS

FRIEND OF THE COURT HANDBOOK 3

RIGHTS AND RESPONSIBILITIES OF THE PARTIES..... 4

PROCEDURES OF THE COURT 6

DOMESTIC RELATIONS PROCESS..... 6

 DIVORCE..... 6

 FAMILY SUPPORT ACTIONS 8

 PATERNITY ACTIONS 9

 INTERSTATE ACTIONS 9

DUTIES OF THE FRIEND OF THE COURT 10

 ALTERNATE DISPUTE RESOLUTION..... 10

 CUSTODY..... 11

 CUSTODY QUESTIONS AND ANSWERS 12

 PARENTING TIME ORDERS 13

 PARENTING TIME ENFORCEMENT 14

 PARENTING TIME QUESTIONS AND ANSWERS 15

 SUPPORT ORDERS 20

 SUPPORT PAYMENTS 20

 SUPPORT ENFORCEMENT..... 21

 HEALTH CARE ENFORCEMENT 22

 MODIFICATION OF A SUPPORT ORDER 23

 SUPPORT QUESTIONS AND ANSWERS 24

 DOMICILE/LEGAL RESIDENCE..... 25

QUESTIONS REGARDING MISCELLANEOUS ISSUES..... 25

 REFEREES 25

 ACCESS TO FRIEND OF THE COURT RECORDS 26

COMPLAINTS 27

AVAILABILITY OF HUMAN SERVICES 28

TOLL-FREE TELEPHONE NUMBERS 29

GLOSSARY OF FREQUENTLY USED TERMS:..... 29

FRIEND OF THE COURT HANDBOOK

This handbook provides useful information about the Friend of the Court and the child support enforcement program. The child support enforcement program was created under Title IV-D (Four D) of the Social Security Act. In Michigan this program is administered by the Office of Child Support in cooperation with Friend of the Court offices. The Office of Child Support is part of the Department of Human Services, and has the responsibility to administer Federal child support program funds, coordinate location of absent parents, and manage the process for income tax intercepts. The Office of Child Support may also initiate actions to have support Orders entered under the Paternity Act or the Family Support Act, and to have support enforcement actions taken in another state.

Children love both parents and most want their parents to be together. When parents do not live together, children and parents alike may experience anxiety which may cause anger, sadness and sorrow. Family structure and relationships are different, including the relationship between both parents and the children, especially when changes involve different residences and a loss of family traditions. It is a very difficult time for everyone, which may worsen when parents do or say negative things to each other.

Parents can help by establishing or maintaining children's regular routines, encouraging frequent and regular contact between children and both parents, and by being supportive of the other parent's involvement in the children's day-to-day life through participation in school and other activities, and exchanging information regarding the children's well-being.

While the husband-wife or significant other relationship may end, the responsibility to be co-parents continues forever. Though your legal relationship may end when your children become adults, your relationship as parents continues indefinitely. Your children will always want you both to be part of their lives, to attend high school or college graduation, to be at their weddings, the birth of their children, and other major life events. They want to be able to proudly 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.

Family law matters are difficult and painful. When a family matter arises, the family division of the Circuit Court has the responsibility to assist you to resolve the concerns which affect your family. The family division and Friend of the Court are aware of the many emotions which complicate the legal decisions surrounding you and your children.

Children need both parents. When you as parents cooperate, you reassure your children that change will be positive. You also build the foundation for your new parental relationship and responsibilities.

We will do our best to handle your case quickly and fairly. Please follow the suggestions in this handbook and you will be well on your way to doing your part.

ORGANIZATION

The Office of the Friend of the Court is divided into divisions with specific functions as follows:

1. The Director and Deputy Director are responsible for the general administrative duties and office operations.
2. The Referee is the hearing officer on Domestic Relations Motions, enforcement actions and hearings processed by the Friend of the Court personnel or cases referred by a Judge.
3. The Support Enforcement Division is responsible for the collection and enforcement of all Child Support Orders, including Medical Enforcement.
4. The Domestic Investigation Division is responsible for all custody and parenting time issues. This division also makes support recommendations for Temporary Orders and for the final Judgment of Divorce.
5. The Accounting Division is responsible for data entry and updating information on all cases including changes of addresses, amounts of Court ordered support, payment records and account status. This division also updates and enters all FIP information into the Friend of the Court computer system.

OFFICE HOURS AND TELEPHONE ACCESS

The Friend of the Court office is open from 8:30 a.m. to 5:00 p.m. each workday. The phone number is (269) 983-7111, Ext. 8575. The Friend of the Court offers 24-hour information on payments of support and account status through a computerized telephone answering system. This information is available by touch tone or rotary dial telephone lines. If using a touch-tone phone, call 983-7111, ext. 8535. If using rotary dial, call 983-1229. Case specific information is available using your Social Security Number and PIN number. If you want to know the last payment date, amount of last payment and/or arrearage amount follow the menu.

MISCELLANEOUS

A receptionist will answer all telephone calls and assist you at the front desk. They will ask you certain questions in order to direct you to the person that can best assist you. We do urge you, whenever possible, to call ahead for an appointment before you visit the office. If you have an appointment with an Accountant, please bring all the data with regard to your payments: receipts, cancelled checks, proof your children are of age, have graduated, have married, death, or any other information pertaining to your account.

When calling the Friend of the Court please ask the name of the person to whom you are speaking.

If you leave a voice mail message, it is not unusual, because of the volume of calls, for a few days to pass before a return call can be made. Please leave a specific message and slowly leave your telephone number.

PARENTING TIME ABATEMENT

If your Parenting Time Order includes a provision for a parenting time abatement, in order for you to receive a credit on your child support for having one or more of the children for 6 (six) consecutive overnights, we must receive written notification **at the end of the parenting time period**, even if you notified us before hand.

If you are the support payer and you are planning on having extended parenting time with one or more of your children (two weeks or longer), please notify the Friend of the Court, in writing, before the parenting time begins and again after the child or children have been returned to the custodial party.

Support abatement during extended parenting time shall be calculated from the beginning of the parenting time to the end of the parenting time. Weekend and/or weekday evening parenting time shall not interrupt the calculation of the support abatement.

RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Each party to a dispute has the right to meet with the individual investigating the dispute before that individual makes a recommendation regarding the dispute. If requested by a party, an investigation shall include a meeting with the party. If a party who requests a meeting during an investigation fails to attend the scheduled meeting without good cause, the investigation may be completed without a meeting with that party.

Each party has the right to:

- Expect the Friend of the Court to perform the duties required by Michigan statute and Court rule.
- Request the Friend of the Court to explain its policies and procedures.
- Be treated fairly by Friend of the Court employees.
- File a grievance with the Friend of the Court office concerning an employee or office procedure.
- Consult with his/her own attorney about any questions or concerns.

Each party has a responsibility to:

1. Inform the Friend of the Court, **in writing**, of the following information:
 - Current address.
 - Current employer or source of income.
 - Current residence of children.
 - Current information regarding health care coverage available as a benefit of employment or maintained by either party.
2. Provide information to the Friend of the Court to assist the office in carrying out its duties as required by law.
3. Obey all Orders of the Court.
4. Keep appointments made with the office, or take the time to cancel or reschedule the appointment.
5. Treat Friend of the Court employees with fairness, respect, and courtesy.

As a citizen using the Court, you have a right to:

- Be treated with fairness, respect, and courtesy.
- Expect Court proceedings to begin on time and proceed in an orderly manner.
- Expect unbiased treatment from Judges, Court employees, and attorneys.

- Object to gender or racially biased statements or remarks made by Judges, Court employees, or attorneys.
- Expect that the Judge and the attorneys in a case are prepared to hear/try your case.
- Consult with an attorney regarding a legal proceeding.
- Ask questions of your attorney before or after your scheduled Court appearance. If you are representing yourself, you may ask the Court for clarification on an action or procedure.
- Request that the Court provide an interpreter if you are unable to communicate in English or are hearing impaired.
- Expect reasonable accommodations for your disability.

As a citizen using the Court, you have the responsibility to:

- Treat the Judge, Court employees, and attorneys with fairness, respect, and courtesy.
- Monitor your own behavior, attitudes, and comments to ensure that you do not display bias due to race, ethnic or religious affiliation, or gender.

THE OFFICE OF THE FRIEND OF THE COURT

Michigan law created Friend of the Court offices in 1919, and there is at least one office serving each Circuit Court’s family division.

Friend of the Court offices have the following duties:

1. When parents cannot agree, or when directed by the Judge, to conduct investigations and make reports and recommendations to the Court regarding:
 - Custody
 - Parenting time including transportation.
 - Amount of child support (including medical support).
2. To offer mediation, when both parents agree to participate, as an optional way of settling disagreements over custody or parenting time of children.
3. To provide enforcement services on all custody, parenting time, and support Orders entered by the Court.

Friend of the Court offices’ child support enforcement responsibilities were mainly created pursuant to requirements of the Social Security Act. In Michigan, the child support program is administered by the Office of Child Support in cooperation with Friend of the Court offices. The Office of Child Support is part of the Department of Human Services. It is responsible for administering federal child support program funds, coordinating location of absent parents, and managing the process for income tax intercepts.

This handbook addresses the basic duties of parties when the Court has issued an Order for custody, parenting time, or support.

This handbook describes general duties of the Friend of the Court. Specific procedures are established by local offices and may vary from office to office. Any questions regarding local procedures or requirements outlined in this handbook may be discussed with your local Friend of the Court, or with an attorney of your choice.

To become familiar with some legal terms, please refer to the glossary on page 37.

OPT OUT

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

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

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

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

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

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

PROCEDURES OF THE COURT

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

Plaintiff's Complaint

Each case begins with the plaintiff filing papers (complaint or petition) which asks the Court to grant an Order. A complaint or petition may ask the Court to:

- Grant a divorce.
- Order child support or spousal support.
- Establish paternity.
- Start an out-of-state support collection effort.
- Grant an Order for custody of a child.
- Establish parenting time with a child.

The defendant is the person upon whom the complaint is filed.

Service

The Michigan Court Rules state that the defendant must be given a copy of the summons and complaint and a Friend of the Court informational handbook whenever minor children are involved or spousal support is requested. The summons asks the defendant to answer the complaint. The summons and complaint must be delivered in a way that the defendant has notice a case has been started against him/her.

Defendant's Answer to Complaint

Once the defendant receives the papers, (s)he is allowed time to answer the claims made. If an answer is not filed within the time frame permitted (usually 21 days), the defendant may lose the right to have his/her concerns heard by the Judge. This could result in an Order granting the plaintiff's requests.

DOMESTIC RELATIONS PROCESS

DIVORCE

A person who wants to end his/her marriage must have a family division Judge enter a judgment of divorce bringing an end to the marriage. To grant the divorce, the Judge must find that there has been a breakdown in the marriage to the point that the parties cannot live together as husband and wife. At least one of the parties must appear in Court and confirm that this breakdown has

happened. In Michigan, a divorce can be granted even if one of the parties does not want the divorce.

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

Many decisions should be made before a judgment of divorce is granted. These decisions may include:

- How will the parties provide guidance and care for the children? (legal custody)
- How much time will the children spend with each parent? (physical custody and/or parenting time)
- How will financial responsibilities for the children be divided? (support)
- How will the children's medical, dental and other health care expenses be paid? (health care coverage)
- Will children be allowed to permanently move from the State of Michigan? (domicile)
- What amount, if any, should one party contribute toward spousal support, either for a short time or on a permanent basis?
- How should property gathered during the marriage be divided? (property settlement)
- Will the wife change her name?

Divorce issues may be decided in many ways. For example:

- The parties may reach an agreement by themselves, or by working with their attorneys.
- Mediation is available through the Friend of the Court or private agencies to resolve disagreements over custody and parenting time.
- In some family divisions, a Friend of the Court Referee may hear the issues and make a recommendation to the Judge.
- The Judge may help in settling a case by having a pretrial or settlement conference.
- The Judge may hold a hearing or trial on issues that cannot be otherwise resolved.

Copies of all papers filed in a case must be given to the Court clerk and also must be given to the Friend of the Court by the person starting the case or by their attorney. The Friend of the Court office will make recommendations on custody, parenting time, and child support if directed to do so by the Judge.

Ex Parte Orders (Orders entered without either party having to appear in Court)

Sometimes a Judge will immediately enter a custody, parenting time, or child support Order upon request of one of the parties. This happens when the Judge is shown that serious damage will occur if the other party is served with the papers before an Order can be entered.

If a party disagrees with an ex parte Order, he/she must file a written objection to the Order, or file a motion with the Court to change or cancel the Order.

When an ex parte Order contains child support, custody, or parenting time, the Order must also include a notice that allows a written objection or motion to be filed within 14 days.

An ex parte Order must state that it will become a temporary Order unless a written objection or motion is filed within 14 days.

Temporary Orders

After a complaint has been filed, temporary custody, parenting time, child support, and sometimes spousal support may need to be decided. Either party, or in some cases the Friend of the Court, may file a motion with the Court asking for such an Order.

If a hearing before a Referee or Judge is scheduled, both parties must be notified of the time and place. At the time of hearing, each party can offer his/her ideas to the Court. The decision made by the Court is written down by the attorneys or parties and put in the form of an Order. An Order is not valid until it has been signed by the Judge and filed with the county clerk. A Referee can

hear disputes, but can only make recommendations to the Judge. Only a Judge can enter Orders or judgments. (See Referee section on page 59).

Reconciliations and Dismissals

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

If parties wish to stop a divorce, they must file an Order of dismissal with the family division, and provide a copy to the Friend of the Court. Any past due support must be paid.

Judgment of Divorce

A judgment of divorce contains the Orders of the Court which deal with custody, parenting time, financial support, property, and other related issues.

There is a minimum waiting period from the date of the filing of a complaint for divorce. For divorce cases without minor children this waiting period is a minimum of sixty days. For divorce cases involving minor children this waiting period is a minimum of six months.

Modification of a Judgment of Divorce

After a Judgment of Divorce has been entered, there are some parts that can be modified in the best interests of the children. These include custody, parenting time, financial support of children, and domicile.

A change can only occur if it is ordered by the Court after:

- (1) Both parties have mutually agreed to change the judgment and sign an agreement (stipulation and consent agreement) which, when signed by the Judge will be entered as an Order; **or**
- (2) A motion has been filed, a Court hearing has been held, and the Judge grants a change.

Agreements reached between parties are only recognized by the Court and the Friend of the Court when those agreements are entered as an Order of the Court. Simply notifying a Friend of the Court employee or a Department of Human Services worker of an agreement does not change the Court Order.

Sometimes, the Friend of the Court has an obligation to petition the Court for a change. (See Parenting Time Enforcement section on page 30 and Modification of a Support Order section on page 52).

FAMILY SUPPORT ACTIONS

A person who has a minor child living with him/her and who is separated from the child's other parent, with no divorce case having been filed, may seek a family support Order (see Family Support Act). A parent who has a child born out of wedlock may also seek a family support Order if the father has been legally determined by both parents signing an affidavit of parentage form.

Generally, family support cases are started by the prosecuting attorney after a referral from the Michigan Department of Human Services. The Department of Human Services makes referrals whether or not a person receives public assistance. A person may also file his/her own action or contact a private attorney to file a family support case.

The Family Support Act does not address custody and parenting time, but some Courts may allow these issues to be included in a family support Order. You may ask the prosecuting attorney or your private attorney about local Court policy before an Order is entered.

If parties reunite and decide to end the family support Order, they must petition the Court for an Order of dismissal. After the Order is signed by the Judge and filed with the Court clerk the Friend of the Court must be given a copy. (Simply notifying a Department of Human Services caseworker or Friend of the Court employee does not end the Court's support Order.)

When the Friend of the Court receives a copy of the Order of dismissal, the family support Order will stop. Some Courts will not dismiss a family support case on the basis of reconciliation. However, they will allow the case to be placed on inactive status. The case will remain inactive as long as the parties stay together and no public assistance is involved.

A family support Order does not prevent either party from filing for divorce. However, the family support Order will remain in

effect until a Judgment of Divorce is granted. If past due support is owed under the family support Order, arrangements to pay this money must be made with the Friend of the Court.

PATERNITY ACTIONS

When a child is born to a mother who is not married to the child's father, legal processes can be used to establish the father's rights and responsibilities. If the child is born out of wedlock, the father and mother can sign an approved affidavit of parentage form to legally establish that the father has parental rights. Those forms are available through the Department of Human Services, prosecuting attorneys, and hospitals.

If an acknowledgment of parentage form is not signed by both parents, either parent can file a paternity action to have the Court determine the legal father of the child. The action can be filed any time before the child reaches age 18. This type of action may also be filed by the Department of Human Services or the child.

Generally, paternity cases are started by the prosecuting attorney after a referral from the Michigan Department of Human Services, which makes referrals regardless of whether a person receives public assistance. A person may also file his/her own paternity action or contact a private attorney to file the action. You may find more information about establishing paternity in the pamphlet, "What Every Parent Should Know About Establishing Paternity." Once paternity has been established, the Court may order custody, financial child support, repayment of birth and delivery expenses of the child, and payment of ongoing health care expenses for the child.

As of October, 1995, custody and parenting time should be ordered in paternity actions. However, the prosecuting attorney or any other attorney appointed by the Court is not required to represent either party in deciding these issues. If the parties cannot agree upon custody or parenting time issues, they may need to represent themselves or retain a private attorney. The Friend of the Court cannot help with parenting time issues unless a Court Order for parenting time has been entered.

If the parties to a paternity action reconcile or marry each other, they should immediately contact the Friend of the Court to discuss how their case can be placed on inactive status. Arrangements must be made to pay all money owed to any public agency.

INTERSTATE ACTIONS

Child support obligations remain in effect regardless of where you live, unless changed by a Court Order. There are serious legal consequences if Orders are not followed. Laws are complicated and vary from state to state.

If either parent leaves the State of Michigan, it does not mean that the child support obligation ends. Both parents have a duty to keep the Friend of the Court advised of their residence and employment. The payer must continue to pay support through the Friend of the Court to assure the recipient continues to receive support. The Friend of the Court has a responsibility to continue enforcing the Order of the Court.

It is important to remember that a parent's obligation to his or her children continues whether or not you reside in the same state. There are serious consequences for failure to abide by a Court Order.

If support payments are not timely, or stop altogether, there are laws between each state to assure that payments are made. Laws to enforce support include:

- **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 (such as both parents and the child moving from the state that entered the original Order).

This act became effective in Michigan on June 1, 1997. If you know that the support payer in your case has moved to another state, contact the Friend of the Court to determine whether you can obtain assistance under UIFSA. Some of the procedures available under UIFSA follow:

- **Interstate Income Withholding**

This process allows the Friend of the Court to send a Michigan Court Order directly to an employer in another State, requiring the employer to deduct child support and send it to the Michigan State Disbursement Unit (MiSDU). If the employer fails to withhold the support, the income withholding Order can be registered in the other state. The other state can then assist in getting

the employer to withhold the support.

- **Registration of the Michigan Court Order for Enforcement**

The Friend of the Court or a private attorney can help with this process. Registration for enforcement allows another state to take the Michigan Order and enforce the full amount of support as if it were that state's own, original Order.

- **Registration for Modification**

When Michigan or another state no longer has jurisdiction to modify the support Order (e.g., neither party or the child lives in the state that issued the Order), and the Order needs modification, the Order may be registered in the state where the other party lives.

- **Assistance with Discovery in Another State**

UIFSA provides some assistance in obtaining information needed for support hearings if one of the parties lives in another state. See your Friend of the Court office for more information regarding what assistance is available.

- **Revised Uniform Reciprocal Enforcement of Support (RURESA) Action**

RURESA preceded UIFSA. It was an interstate law which allowed establishment and enforcement of child support Orders in the state where the support payer lived.

If a RURESA Order was established in your case, it will continue to be enforced. However, if that Order needs to be modified after June 1, 1997, modification will occur in accordance with the requirements of UIFSA.

DUTIES OF THE FRIEND OF THE COURT

ALTERNATE DISPUTE RESOLUTION

If you are a party to an action and have a dispute that you cannot resolve between you and the other party or parties, you are encouraged to participate in alternative dispute resolution. Typically, when parties go to Court, decisions affecting their family are made by the Judge, based upon available evidence and according to law. Often times parties feel that going to Court and having a Judge make the decision results in a sense of loss, because decisions are made by someone not directly affected by the outcome. Alternative dispute resolution places the responsibility for settling issues upon parties, without the direct involvement of the Court. Alternative dispute resolution may involve parents, grandparents, and even third parties. It maintains the decision-making power for families in the hands of people who have a personal interest in, and knowledge of, that family, and not with the Judge or another third party.

Alternative Dispute Resolution may include:

Friend of the Court Mediation: By law, the Friend of the Court is required to provide mediation services whenever there is a dispute regarding custody or parenting time. These services can be provided by a Friend of the Court employee, or the Friend of the Court may contract to have a private mediator provide the services. This service is provided by contract mediators in Berrien County.

Mediation provides parents the opportunity to communicate and cooperate and, with the assistance of a neutral third party, resolve any disputes regarding custody or parenting time.

If you have a dispute regarding custody or parenting time that you cannot resolve between you, you are encouraged to contact the Friend of the Court and participate in mediation.

Participation in mediation is voluntary; both parties must be willing to participate. If you reach an agreement, the mediator can prepare a consent agreement. You may review this agreement with your attorneys before it is entered as an Order. If parties agree, the consent agreement will be put in the form of a Court Order, signed by the Judge and entered with the Court clerk.

Matters discussed during a mediation are confidential. A Friend of the Court employee who acts as a mediator in your case cannot share information about what happened during mediation, except for the agreement reached. In addition, a Friend of the Court employee who acts as a mediator in your case cannot enforce or investigate any issues regarding your case.

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

Mediation under the Court rule must be conducted by an attorney who has at least five years of experience in law, and a great deal of experience in family law matters.

Parties must attend the mediation sessions and may be accompanied by their attorneys. Any information shared with the mediator is considered privileged and the mediator may not disclose this information during any future proceedings or at trial.

If an agreement is reached during mediation, that agreement must be reduced to writing and signed by the parties and their attorneys. The parties must take necessary steps to have the mediation agreement entered as an Order of the Court.

If either party rejects the mediator's recommendation, even in part, the case will go to trial. The Court may not take the mediator's report and recommendation into consideration at trial.

An individual who performs Court Rule Mediation is entitled to reasonable fees, which are usually divided equally between the parties. If no agreement is reached during mediation, then within 21 days the mediator must prepare a report to the parties, their attorneys and the mediation clerk summarizing the essential facts and include any recommendations on issues. The mediator may not make a recommendation on custody, unless the parties resolved a custody issue during mediation.

If both parties accept the mediator's recommendation, the parties must take necessary steps to have the recommendation entered as an Order.

Arbitration/Binding Mediation: In some Circuits, parties who have a dispute may participate in arbitration. Arbitration, also known as binding mediation, may be conducted by an individual or a panel. The arbitrator(s) will consider the parties' issues and may consider the input of witnesses. If the parties cannot agree on issues, the arbitrator will make a determination based upon the information available.

Once the arbitrator makes his/her decision, that decision is binding upon the parties, unless the Court vacates the decision based upon evidence that the arbitrator was biased, exceeded his or her powers, refused to hear evidence or was otherwise prejudiced.

If the arbitrator's decision is not vacated, it will be enforced by the Court in the same way as any other Order of the Court.

Conciliation: Some Friend of the Court offices provide conciliation in an attempt to resolve disputes that may not be responsive to mediation. While the conciliation process varies widely, the common element is that the conciliator attempts to use mediation techniques to help parties resolve their disputes. Unlike mediation, conciliation might not be voluntary and, in the event parties cannot reach an agreement, the conciliator may prepare a recommendation, and the Court may enter an Order, addressing the issues.

You may contact an attorney or the Friend of the Court office to determine the types of alternative dispute resolution methods available in your area.

CUSTODY

A number of custody arrangements are possible. The most common are:

- **Joint Legal Custody:** Means that parents will communicate and cooperate with one another and attempt to reach mutual decisions regarding major issues affecting their children. This decision making process includes, but is not limited to: major medical decisions, educational decisions, and religious upbringing, if any.
- **Joint Physical Custody:** Means that children live with one parent part of the time and the other parent part of the time. This time does not have to be equal. The parent who has care of the children at any given time is responsible for routine decisions regarding the children.
- **Primary Physical Custody:** Means that the children live primarily with one parent.
- **Sole Legal and Physical Custody:** Means that the children live with one parent and that parent is responsible for making major decisions regarding the children.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the Judge must decide by

considering all of the following factors of the Michigan Child Custody Act.
(MCL 722.23;MSA 25.312(3))

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

CUSTODY QUESTIONS AND ANSWERS

• How do I get an Order for custody?

A petition must be filed requesting custody. If parents agree, they may sign an agreement (stipulation and consent agreement), and obtain the Judge's approval. That agreement can then be entered as a custody Order.

• How do I change an existing Order for custody?

A petition must be filed to change a custody Order. If parents agree, they may sign an agreement (stipulation and consent agreement) and obtain the Judge's approval. That agreement will then change the custody Order.

• Can I file my own motion to change custody?

You may file your own petition, known as an *In Pro Per* or *Pro Se* (which means, essentially, "on your own") motion. The office of the Friend of the Court will provide forms and instructions to any party who wishes to file this type of motion. However, it is important to remember that the Court will still hold you to the same rules to which an attorney would be held. There may be many complex issues involved in a custody case and you may wish to have an attorney represent you. The Friend of the Court office cannot file a motion for you, nor can it provide you with an attorney.

• Is there any way the Friend of the Court can assist parties in reaching an agreement regarding custody?

The Friend of the Court will provide domestic relations mediation whenever there is a custody dispute. Mediation allows an impartial third party to assist parents in settling their custody dispute. Both parties must agree to participate in mediation (See Alternative Dispute Resolution section on page 20).

• After a petition for custody has been filed, and we cannot reach our own agreement, what does the Friend of the Court have to do?

The Friend of the Court is required to:

- (1) Offer mediation services to the parties; or

(2) If directed by the Judge, conduct an investigation and file a written report and recommendation based upon the factors listed in the Michigan Child Custody Act (See Page 24).

• Do I have the right to receive a copy of the Friend of the Court report and recommendation on custody?

The Friend of the Court must give each party, or his/her attorney, a copy of the report, recommendation and supporting information, or a summary of the information, used in making the recommendation. This report must be provided before the Court takes any action on the recommendation.

• What happens if I have an Order for custody and the other parent does not return the child to me as stated in the Court Order?

- You may contact the Friend of the Court and request enforcement.
- You may contact your attorney.
- If you have reason to believe the other parent does not intend to return the child, you may contact the police or the prosecuting attorney and request that parental kidnapping charges be filed.

• How do I enforce a custody agreement if the other parent has taken the child to another country?

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

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

You can write to the Office of Children's Issues, Overseas Citizens Services, Department of State, 2201 C Street, NW, Room 4817, Washington, DC 20520-4818. That office also can be reached by phone: 202-736-7000, by fax: 202-647-3000, by Internet: <http://travel.state.gov>

• Does the Friend of the Court have an obligation to investigate alleged abuse or neglect of a child?

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

The Friend of the Court office has a duty, when ordered by the Court, to conduct an investigation when a party files a custody, or parenting time, petition. Claims of abuse or neglect should be disclosed to the Friend of the Court office during its investigation.

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

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

PARENTING TIME ORDERS

A parenting time Order grants time between the parent who does not have custody, and the children. The Michigan Child Custody Act (MCL 722.27a, MSA 25.312(7a)) states:

"[Normally], parenting time shall be granted to a parent in a frequency, duration, and type to promote a strong relationship between the child and the parent granted parenting time. If the parents of a child agree on parenting time terms, the Court shall order the parenting time terms unless shown that . . . the parenting time terms are not in the best interests of the child. A child shall have a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that the parenting time would endanger the child's physical, mental, or emotional health."

During a person's parenting time, that parent is responsible for all routine decisions affecting the child.

The Michigan Child Custody Act states that the Judge may consider the following factors when determining the frequency, duration, and type of parenting time to be granted:

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

PARENTING TIME ENFORCEMENT

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

The Friend of the Court normally must initiate enforcement if it receives a written complaint stating specific facts which show a violation of the custody or parenting time Order. The Friend of the Court's office will provide forms to assist the parents with this process. However, the Friend of the Court's office may decline to respond to the alleged violation if (1) it occurred more than 56 days before the complaint is made or (2) the complaining party has made two or more complaints found by the Court to be unwarranted and has failed to pay any costs assessed in those actions.

If the Friend of the Court believes that the parenting time Order has been violated, the office may:

- (1) Schedule a meeting with the parties and attempt to resolve the dispute; or
- (2) Refer the parties to a mediator if they agree to mediation.

If either of the above options are not successful, the Friend of the Court shall do one or more of the following:

- (1) Apply local make-up parenting time policy. Each office is required to have such a policy. See below for this Court's make-up policy.
- (2) Schedule a contempt of Court hearing. At the time of this hearing, the parent who is ordered to appear in Court is required to show "good cause" why he/she is not obeying the Court's Order for parenting time. If the Court decides the parent is in violation of the Court Order, the Court may impose penalties including make-up parenting time, fines, license suspension, and/or jail time.
- (3) Petition the Court for a change in the existing parenting time Order.

MAKEUP PARENTING TIME POLICY

Wrongfully denied parenting time shall be made up at a later date with the same type of parenting time that was denied, i.e. weekend for weekend, weekday for weekday, holiday for holiday, and summer parenting time for summer parenting time. The makeup time shall be taken at a time determined by the non-custodial parent within one year of the time she or he was wrongfully denied. If makeup time is not completed within one year, absent fault of the custodial parent, the parenting time credit shall be expunged and makeup time will not be enforced.

The Friend of the Court initiates enforcement by sending a Notice of Alleged Denial to the accused party within 14 days of when the office receives the complaint. The procedure is:

Within fifty-six (56) days after an alleged, wrongfully denied parenting time the non-custodial parent shall advise the Friend

of the Court, in writing, of the date(s) time(s) and location(s) of alleged, wrongfully denied time. The Friend of the Court shall send to the custodial parent a notice of the application of this policy and the alleged denial. This notice shall contain the following statement in boldface type of not less than 12 points.

FAILURE TO RESPOND IN 21 DAYS TO THE OFFICE OF THE FRIEND OF THE COURT SHALL BE CONSIDERED AS AN AGREEMENT THAT PARENTING TIME WAS WRONGFULLY DENIED AND THAT OFFICE WILL ADJUST THE ACCOUNT OF PARENTING TIME ARREARS ACCORDINGLY.

The date of the postmark will be used to determine whether either party has complied within the time limits. **The fifty-six (56) day time period commences the day following the alleged denial of parenting time.**

If the custodial parent makes a timely reply with an explanation as to why she or he feels time was not wrongfully denied, the Friend of the Court may schedule a joint meeting between the parties in an attempt to resolve the dispute. If the parties cannot reach an agreement or if in the Friend of the Court's opinion, a joint meeting would not be productive, the Friend of the Court may schedule a hearing before the Referee or Judge to determine whether parenting time was wrongfully denied. Notice of the hearing shall be given to both parties.

If the Friend of the Court determines that parenting time was not wrongfully denied, both parties shall be notified and no further action shall be taken by the Friend of the Court.

The following are examples of explanations by the custodial parent for denial of parenting time that are generally **not** acceptable.

1. The child had a minor illness.
2. The child had to go someplace else.
3. The child was not home.
4. The non-custodial parent is behind in his/her support obligation.
5. The custodial parent did not want the child to go for parenting time.
6. The weather was bad (only when a road emergency exists).
7. The child has no clothes to wear.
8. The child refused to go or fusses when picked up by the other parent.
9. The non-custodial parent failed to meet preconditions unilaterally established by the custodial parent.
10. Religious reasons – unless provided for in the Court Order.
11. The child returned from a prior parenting time with head lice.
12. The child is grounded for the weekend.

The following are examples of explanations by the custodial parents for denial of parenting time that **are** generally acceptable.

1. Drugs or alcohol impaired the non-custodial parent at the time of parenting time.
2. The non-custodial parent failed to arrive for parenting time within forty-five (45) minutes of the time specified in the Order unless otherwise arranged by the parties.
3. The child had a major illness.
4. The non-custodial parent failed to meet Court-established preconditions.

The non-custodial parent shall give to the Friend of the Court and custodial parent a written notice of makeup time at least 1 week before a makeup weekday or weekend time or at least 30 days before a makeup holiday or makeup summer time.

PARENTING TIME MODIFICATION ACTIONS STARTED BY PARTIES

An individual may file his/her own motion for a change in his/her parenting time Order. This is known as an *In Pro Per*, or *Pro Se*, parenting time motion. The office of the Friend of the Court will provide forms and instructions to any party who wishes to file this type of motion without the benefit of an attorney.

A party may also contact an attorney to file a motion requesting a change in the parenting time Order.

If both parents agree (stipulate) to change the parenting time Order in a way that benefits their child, they may sign an agreement (stipulation). Once that agreement is put in the form of an Order, signed by the Judge, and filed with the county clerk, it will become an Order of the Court.

PARENTING TIME QUESTIONS AND ANSWERS

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

As parents, you have a responsibility to arrange a schedule of parenting time (previously called visitation) which is reasonable based upon the best interests of the child(ren) and your family situation.

NOTE – This guideline supercedes all other reasonable rights of parenting time policies provided for in Court Orders with the exception of the summer parenting time provisions. For all Orders entered *PRIOR TO* September 1, 2006, the non-custodial parent may have a minimum of three (3) weeks during the summer break (AS DEFINED) and should notify the custodial parent and the Friend of the Court Office, in writing, of parenting time dates desired not later than May 1 of each year.

If you cannot mutually agree to a parenting time schedule, the following has been adopted effective September 1, 2006, as the minimum amount of parenting time and will be enforced by the Friend of the Court:

The non-custodial parent shall have parenting time every other weekend from Friday at 6:00 p.m. to Sunday at 6:00 p.m.

HOLIDAYS

ODD NUMBERED YEARS

Father

New Year's Eve
Easter
Fourth of July
Halloween
Christmas Eve
Children's Birthdays
Spring Break
1st half Christmas Break
2nd half Summer Break

Mother

New Year's Day
Memorial Day
Labor Day
Thanksgiving
Christmas Day
2nd half Christmas Break
1st half Summer Break

EVEN NUMBERED YEARS

Father

New Year's Day
Memorial Day
Labor Day
Thanksgiving
Christmas Day
2nd half Christmas Break
1st half Summer Break

Mother

New Year's Eve
Easter
Fourth of July
Halloween
Christmas Eve
Children's Birthdays
Spring Break
1st half Christmas Break
2nd half Summer Break

Each Father's Day and Father's birthday with Father and Mother's Day and Mother's birthday with Mother.

HOLIDAY:

All times are MICHIGAN TIME

New Year's Day

10:00 a.m. 01/01 to 10:00 a.m. 01/02

Easter

10:00 a.m. to 8:00 p.m.

Memorial Day

10:00 a.m. to 8:00 p.m.

Fourth of July

10:00 a.m. 07/04 to 10:00 a.m. 07/05

Labor Day

10:00 a.m. to 8:00 p.m.

Halloween

10:00 a.m. to 8:00 p.m.,
excepting school hours

Thanksgiving Day

10:00 a.m. to 10:00 a.m. the day after

Christmas Eve

10:00 a.m. 12/24 to 10:00 a.m. 12/25

Christmas Day

10:00 a.m. 12/25 to 10:00 a.m. 12/26

New Year's Eve

10:00 a.m. 12/31 to 10:00 a.m. 01/01

All Birthdays

10:00 a.m. to 8:00 p.m.,
excepting school hours from after school until 8:00 p.m.

Father/Mother's Day

10:00 a.m. to 8:00 p.m.

Other religious holidays must be addressed in a Court Order.

Holiday Parenting Time, Spring and Christmas Breaks, all take precedence over Regular Parenting Time. In the event that the parent's holiday coincides with his/her regular weekend schedule, the children shall remain with that parent continuous through the Holiday/Weekend.

Birthday Parenting Time shall include all siblings.

Each Father's Day and Father's birthday with Father and Mother's Day and Mother's birthday with Mother.

In addition to the above reasonable rights of parenting time there will be time as follows: Absent a mutual agreement to the contrary, Wednesday evenings from 5:00 to 8:00 p.m.

EXTENDED PARENTING TIME

Summer Break

Summer parenting time begins at 6:00 p.m. the first Friday after school recesses for the school year and ends at 6:00 p.m. seven (7) days before the new school year commences (For example, if the last day of school is a Wednesday, the parenting time would begin at 6:00 p.m. on the Friday immediately following Wednesday. If school recesses on a Friday, the summer parenting time begins at 6:00 p.m. that evening.) Unless otherwise agreed between the parties, the mid-break exchange time is 6:00 p.m.. During extended summer parenting time, the parent who is not exercising extended parenting time shall have regularly scheduled weeknight and alternating weekend parenting time provided that the child has no out-of-town vacation travel plans. If out-of-town vacation plans prohibit the other parent from exercising their alternating weekend parenting time, make-up parenting time must be provided. Any out-of-town vacation plans and make-up parenting time, if applicable, should be confirmed between both parents, in writing, with a copy to the Friend of the Court no later than May 1 of each year.

Christmas Break

Christmas vacation begins at 6:00 p.m. the day school recesses for the Christmas school vacation. Christmas vacation ends at 6:00 p.m. the day before school commences. Unless otherwise agreed between the parties, the mid-break exchange time is 6:00 p.m. During the Christmas school vacation, weekday evening parenting time is suspended. Any out-of-town vacation plans

should be confirmed between both parents, in writing, with a copy to the Friend of the Court no later than November 30 of each year.

Spring School Break

Spring school break begins at 6:00 p.m. the day school recesses for the school spring break and ends the day before school commences at 6:00 p.m. The parent that does not have extended spring break vacation shall have regularly scheduled weekend parenting time provided the child has no out-of-town vacation plans. If out-of-town vacation plans prohibit the other parent from exercising his or her alternating weekend parenting time, make-up parenting time must be provided. Any out-of-town vacation plans and make-up parenting time, if applicable, should be confirmed by both parents, in writing, with a copy to the Friend of the Court no later than February 15 of each year.

TRANSPORTATION

Transportation shall be shared by the parents. The visiting parent initiates the parenting time by picking up the minor child at the other parent's residence. The other parent will be responsible for transporting the minor child(ren) at the conclusion of the parenting time.

The exchanges will occur at the residence of each parent respectively, unless your Court Order specifically states otherwise. Both parents have a right to petition the Court or mutually agree to set a neutral location for pickup /dropoff.

Either parent can designate a fully licensed, insured adult, who is not under the influence of any intoxicant and/or mood-altering substance, to transport the minor child(ren). **The child(ren) must be familiar with that adult.** Identification can be requested prior to release. It is advisable to have the parent send a note, giving consent, with the transporter so there are no misunderstandings.

Child seats may be required by law. Each parent is to provide the appropriate child car seat when required by law. Parents are to be in compliance with all Michigan Laws with regard to child car seating and seatbelt usage.

MISCELLANEOUS

In the event either parent absents themselves from the State of Michigan with the minor child(ren) for a continuous period of more than 24 hours, he or she shall first provide the other parent with a basic itinerary during his or her absence, and an emergency phone number through which he or she can be contacted in emergency circumstances only.

Parenting time takes precedence over the child(ren)'s other scheduled activities. Neither parent shall arrange for any appointment or activity for the minor child(ren) during the other parent's time with the child(ren), without the express permission and agreement of the other parent. Each parent shall facilitate each minor child's attendance and participation in school-related performances, and any other activities (e.g. organized sports, music or other lessons, church) in which the minor child(ren) is/are involved through the mutual agreement and permission of each parent. If the minor child(ren) was/were involved in these activities during the parties' relationship with each other and the child(ren) wishes/wish to continue these activities, each parent should try to accommodate the child(ren)'s continued participation in the activity.

Unless your Court Order specifically states otherwise, both parents are obligated to provide clothing for each minor child during his or her custodial time. Outer wear such as boots and coats are expected to be shared and returned at the conclusion of each parenting time.

If summer school is necessary for the child to pass to the next grade, then the child **MUST** attend. The custodial parent must obtain written verification from the school regarding the necessity of enrollment and provide copies to the non-custodial parent and the Friend of the Court.

Child Support and Parenting Time are two (2) separate issues. The custodial parent **cannot withhold** parenting time due to non-payment of support; likewise, the payer of support **cannot withhold** payment of support due to denial of parenting time.

If at any time the non-custodial parent is going to be late, the other parent should be called; if no call the custodial parent must wait 45 minutes and if the non-custodial parent does not arrive, they are then free to leave and make other plans. If at any time there is a problem with the custodial parent regarding parenting time, the other parent should be notified as soon as possible so that alternative arrangements can be made.

If you disagree upon a "reasonable" schedule of parenting time, you have the following options:

- See if the other parent will agree to mediation or counseling.

- File a petition on your own or contact an attorney.

- **I have a specific parenting time schedule that I would like to change. What can I do?**

- See if you and the other parent can agree to a change. This change, along with the reasons for this change, may be presented to the Court as a proposed new Court Order of parenting time. An agreement between parties without a Court Order is not enforceable.

- If both parents agree, they may participate in mediation.

- File a petition with the Court for a change in the Order on your own, or contact an attorney.

- **Child support payments are not being made. Do I have to allow parenting time?**

Yes. Parenting time and support are separate parts of a Court Order with separate enforcement procedures (See Support Enforcement section on page 48).

- **The other parent is not sending or returning medications and/or other personal items for our child. Is there anything the Friend of the Court can do?**

All medications should be provided to the other parent in the original container with a note stating when the last dose was given. All medications should be returned to the custodial parent at the conclusion of parenting time with a note stating when the last dose was given.

The Friend of the Court enforces the written Order of the Court. If your Court Order does not address personal items, try to work it out with the other parent or through means such as mediation. If that is unsuccessful, you may file a petition with the Court requesting personal items be sent for, or returned after, parenting time and medications be administered pursuant to doctor's orders.

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

File a written complaint with the Friend of the Court. If the Friend of the Court believes the parenting time Order has been violated, it shall start enforcement action. (See Parenting Time Enforcement section on page 30).

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

That is your decision as a parent. If you violate the Court Order in such a situation, you may have to explain to the Court, at a "show cause" hearing, why you should not be held in contempt for your decision, which you felt was in the best interests of the children.

- **I have asked to telephone my children at the other parent's home; (s)he says no. What can the Friend of the Court do?**

The Friend of the Court enforces the written Order of the Court. If your Court Order does not provide for telephone calls, try to work it out with the other parent or pursue other methods of resolution such as mediation. If that is unsuccessful, you may file a petition with the Court requesting additional parenting time through telephone access.

- **The Friend of the Court will not help enforce my parenting time Order. What can I do?**

The law requires the Friend of the Court to provide enforcement services regarding parenting time Orders. If you believe the Friend of the Court is not trying to enforce the Order, you may file a grievance regarding their procedures (See Complaints section on page 63). You may also file a petition for enforcement.

- **I am concerned that my child is being abused when with the other parent. What should I do?**

Report your concerns to the Protective Services unit of the Department of Human Services. You may also wish to provide your Friend of the Court office with a written copy of your concerns so that they may be made a part of your file. The Friend of the Court office, however, does not have the authority to investigate and remove children in abuse or neglect matters. This is done by Protective Services through an action filed in the family division of the Court.

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

Parents are to obey Court Orders, regardless of the child's age. It is the parent's responsibility to promote a positive relationship with the child and the other parent. You may want to try the following options:

- Work out a different arrangement with the other parent.
- Contact the Friend of the Court and request mediation or seek counseling.
- File a petition with the Court asking for a change in your parenting time Order.
- Request the Friend of the Court provide enforcement of the parenting time Order (See Parenting Time Enforcement section on page 30).

• The other parent refuses to see our children. What can the Friend of the Court do?

The Friend of the Court cannot force a parent to engage in parenting time with his/her children. It is the parent's duty to promote a positive relationship with the children and the other parent. Your options include: counseling, mediation, and/or filing a petition for change of the parenting time Order.

SUPPORT ORDERS

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

Support may include:

- Child support.
- Spousal support.
- Payment of medical, dental and other health care.
- Payment of confinement expenses.
- Payment of child care expenses.
- Payment of educational expenses.

All support Orders must be stated in a monthly amount which is due on the first day of the month. When an Order takes effect on a day other than the first day of a month, or ends on a day other than the last day of the month, the support amount must be prorated for the partial month. Support is past due if it is not paid by the last day of the month in which it became due.

Support Investigations and Reports

The Friend of the Court is required to periodically review child support provisions, including health care, and petition the Court for a change in the Order if a change is warranted (See Modification of a Support Order section on page 29).

Otherwise, when directed by the Judge, the Friend of the Court will conduct a financial investigation and make a written report and recommendation to the parties (or his/her attorneys) and the Judge regarding child support. Friend of the Court reports cannot be used as evidence in Court without the agreement of both parties. The Friend of the Court investigator may be called as a witness to testify about their report.

Child Support Formula

Michigan law requires that the child support formula be used by the Friend of the Court or Prosecuting Attorneys when recommending, and by Judges when ordering, child support amounts. The Friend of the Court's recommendation and the Judge's determination can only vary from the formula when there is clear reason, either in writing or on the Court record, stating why use of the formula would be "unjust or inappropriate."

In Michigan, the child support formula considers both parents' incomes when establishing or changing support.

For more information about the child support formula, see "*Facts about the Michigan Child Support Formula*" (PSA 24). The formula may be found on the Michigan Supreme Court's web page (<http://www.courts.michigan.gov/scao/services/focb/mcsf.htm>).

SUPPORT PAYMENTS

Support is paid through the State Disbursement Unit (SDU). When support received by the SDU sufficiently identifies to whom

the support should be paid, it must be forwarded to the recipient within two (2) business days of receipt.

Support is normally paid through income withholding. If you are paying directly, please include your case number and Social Security Number at the time of payment. Do not send cash through the mail. The address for the SDU is:

Michigan SDU
PO Box 30351
Lansing, MI 48909-7851

The Child Support Payment Office, called Tri-Court Cashiering, is located on the first floor of the Courthouse. This office is responsible for receiving child support payments made at the Courthouse. This office accepts cash, cashier checks and money order payments made in person only. No personal checks are accepted.

Payments can be made by credit card through Government Payment Services, Inc. (GPS). This service is available 24 hours toll free by calling 1-888-604-7888. Government Payment Services will charge the cardholder a convenience fee for this service. In order to process the payment, Government Payment Services will need to be told the following information at the time of the telephone call: name of payer, payer's date of birth, payer's social security number, case number, file number, and the name of the payee. Government Payment Services accepts Discover, Visa, MasterCard, Diner's Club, and American Express credit cards. Credit card payments and direct bank payments can be made at www.misdu.com.

Once a year, upon request, the Friend of the Court will provide parties with a statement of account free of charge.

Statutory Service Fees

Michigan law requires the Friend of the Court charge the payer of support a fee on all child support Orders to partially offset administrative costs.

Surcharge on Overdue Support

Public Act 141 of 1995 requires the Friend of the Court to levy an annual surcharge on all support payments that are past due as of January 1 and July 1 each year.

This law, effective January 1, 1996, means that every January 1 and July 1 the Friend of the Court office will add a surcharge at a variable rate equal to 1% plus the average interest rate paid at auctions of a 5-year U.S. Treasury Note during the six (6) months immediately preceding July 1 and January 1. The surcharge will not compound. This surcharge is added to all past due support, except for support ordered under the paternity act for the time period before the date of the original Order.

Any surcharge collected for support due the custodial parent will be paid to that parent. Any amounts due the State of Michigan, for the period of time the child(ren) and custodial parent receive TANF or FIP benefits, will incur a surcharge payable to the State.

SUPPORT ENFORCEMENT

The Friend of the Court is required to begin enforcement action when past due support reaches an amount equal to one (1) month of support. This may be done by sending a written request to the Enforcement Officer.

• Enforcement of Support

The Friend of the Court has many options available to collect support. They include:

• Immediate Income Withholding

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

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

- The Court makes a specific written finding that income withholding is not in the best interests of the child(ren).
- All previously ordered support has been paid on time.

- The payer agrees to keep the Friend of the Court informed of the name, address and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

OR

- The parties enter into a written agreement that is approved by the Court and provides that the Order of income withholding will not take effect immediately, but that an alternative payment arrangement has been made. The payer shall keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

• Contempt of Court (Show Cause) Hearing

If support is not paid on time, the Friend of the Court or a party may begin a contempt action (known as a "show cause" hearing), by filing papers asking the Court to order the payer to appear in Court. For more information about show cause proceedings, see *"Show Cause Proceedings in Domestic Relations Cases"* (PSA 25).

• Income Tax Intercept

If support is overdue, the Friend of the Court must request an income tax intercept for cases that qualify under the Federal IV-D program.

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

Federal Tax Intercept money must be held by the Friend of the Court for 6 months before being released.

In order for money to be intercepted, the non-custodial parent must have filed an income tax return and have money coming back.

• Other Enforcement Remedies

Several other enforcement remedies exist. If the payer's arrearage is sufficiently large, the arrearage may be reported to a consumer reporting agency or the payer's driver's, occupational, sporting or recreational licenses may be suspended. In addition, the Friend of the Court may be able to place a lien on the payer's real and personal property, and have that property converted to a support payment. For more information, see *"Friend of the Court: Enforcement of Domestic Relations Orders"* (PSA 27) and *"Using Liens To Obtain Past Due Support"* (PSA 23).

• Fraudulent Conveyances

If a support arrearage has accrued and there is reason to believe the payer transferred title or ownership of real or personal property without fair consideration, the Friend of the Court may obtain a settlement requiring payment of the arrearage or initiate proceedings to have the transfer set aside.

HEALTH CARE ENFORCEMENT

Both parents are responsible for providing health care coverage for the parents' children. If a parent is required to provide coverage, 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 then is required to deduct premiums for the coverage.

Healthcare definitions:

- Remedial care is defined as non-prescription medications purchased on a routine basis (i.e. bandaids, vitamins, cough syrup). These amounts are covered by the base support obligation.
- Ordinary healthcare expenses are co-payments, deductibles, uninsured / unreimbursed expenses and other healthcare-related costs. This amount is added to support Orders with an effective date of November 1, 2004, or later.
- Extraordinary healthcare expenses are uninsured/unreimbursed expenses which exceed ordinary healthcare expenses; also the payer's expenses. The amount is apportioned between the parties bases on the percent of the party's net income.

Not all health care expenses will be paid by a health care plan. Families routinely spend \$345.00 per year per child on ordinary healthcare expenses. The annual ordinary medical expense is based on this average. The child support formula presumes an annual expense of \$345.00 for one (1) child, \$690.00 for two (2) children, \$1,035.00 for three (3) children, \$1380.00 for four (4) children, \$1,725.00 for five (5) or more children. The Friend of the Court will assist in collecting the payments required by the

Court's Order.

- Extraordinary healthcare expenses cannot be enforced by the Friend of the Court until the parents present receipts showing he/she has spent the annual amount (i.e. \$345.00 if one (1) child) on ordinary medical expenses. The Friend of the Court will deny claims, if sufficient proof is not provided.
- Requested payment from the other parent within 28 days of receiving an insurance payment or a determination that the expense is not covered.
- Payment was not made within 28 days of the request to the other party.
- The Friend of the Court's assistance is requested within one year of incurring the expense, within 6 months of denial of coverage of the expense, or within 6 months after the other parent fails to pay the expense as agreed.

If the Friend of the Court receives a written request for help which meets the requirements, the Friend of the Court must send a copy of the request to the other party, along with notice that if no objection is filed within 28 days the amount will become a support arrearage subject to any enforcement process. If an objection is filed, the Friend of the Court must schedule a Court hearing to resolve the dispute.

CRIMINAL ENFORCEMENT OF SUPPORT

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

MODIFICATION OF A SUPPORT ORDER

The Friend of the Court will review child support Orders once every 36 months. This review is automatic in public assistance cases, and upon written request in non-public assistance cases.

NOTICE PURSUANT TO MCL 552.517b(1); MSA 25.176(17b)(1).

If you are a party to a domestic relations action and a final judgment has been entered, you have the right to request a review of child support or health insurance by contacting the Friend of the Court, in writing, and requesting a review. Within 15 days of the date the office receives your request, it will determine if your case is due for a review. The Friend of the Court is not required to investigate more than 1 request received from a party each 36 months.

Within 180 days after determining a review is required, the Friend of the Court will send notice, conduct a review, and obtain a modification of the Order, if appropriate.

If the Friend of the Court office determines that no change in the Order is warranted, then within 30 days of this determination, it shall advise the parties. If either party objects, the Friend of the Court will schedule a hearing before the Court on this objection.

Threshold for Modification

A "minimum threshold" establishes when a child support Order should be changed. This threshold is the lesser of 10% or \$50.00 per month. If the difference between the current support amount and the proposed support amount is 10% or \$50.00, whichever is less, the Friend of the Court will petition the Court for a change. If the difference between the current amount and the proposed amount is less than the minimum threshold, the Friend of the Court is not required to petition for a change.

Either party may still file a petition for a change in the support Order, even if the minimum threshold is not met.

Support Modification Actions Started by Parties

A party may file his/her own motion for a change in his/her support Order. This is known as an *In Pro Per*, or *Pro Se*, support modification. The office of the Friend of the Court will provide forms and instructions to any party who wishes to file a motion without the benefit of an attorney.

A party may also contact an attorney to file a motion requesting a change in the amount of support.

If both parents agree (stipulate) to change the support Order to the amount shown by the child support formula, or in any other amount, they may sign an agreement (stipulation). Once that agreement is put in the form of an Order, signed by the Judge, and filed with the county clerk, it will become an Order of the Court.

Non-Retroactive Modification of Support

Michigan law seldom allows for retroactive modification of child support. This means that once child support is ordered, it generally cannot be changed once it is due and payable.

If your financial situation changes, you should immediately file a motion for a change in the support amount. The Court may adjust the support amount back to the date that the motion was filed and served. **Simply notifying the Friend of the Court of a change in either party's financial situation does not change the Court Order.**

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

SUPPORT QUESTIONS AND ANSWERS

• How do I get an Order for child support?

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

• Do I need an attorney to get an Order for support?

You are not required to have an attorney to file a petition for support. An attorney may be helpful when filing papers and following specific rules.

• Can I receive child support after my child reaches age 18?

Child support can continue past age 18 only if certain conditions are met. Support may continue up to age 19½ if the child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution.

• Do the Friend of the Court and the Judge have to use the child support formula?

Yes. A different amount may be used if the Referee or the Judge state the amount required by the formula and a clear reason in writing or on the record why using the formula is "unjust or inappropriate."

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

Yes. Parenting time and support are separate parts of a Court Order, with separate enforcement actions (See Parenting Time Enforcement section on page 30).

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

Contact the Friend of the Court for enforcement if overdue support equals the amount due for one month. You may also contact an attorney to start enforcement action.

• My Court Order states I am to pay support through the Friend of the Court. Can I pay the other parent directly?

No, not without a change in your Court Order and having that Order filed with a Court clerk. If you fail to do so you might not receive credit for the payment.

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

No. The Friend of the Court must send to the State any child support payments made while you are on public assistance.

If payments are made, you qualify to receive the first \$50.00 per month, plus any child support amount paid which is over and above the amount of your public assistance grant. This money is processed through, and paid by, the Michigan Department of Human Services.

If you have questions regarding this program, contact your Department of Human Services support specialist.

• Is the Friend of the Court responsible for making sure that child support money is being spent on the children?

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

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

Michigan law requires support to be set according to the child support formula, which considers the parties' incomes. Therefore, an incarcerated payer's support obligation might be modified if a motion to modify support is filed. That motion may be filed by either party or the Friend of the Court office.

DOMICILE/LEGAL RESIDENCE

If the Order states that you cannot move the children from the State of Michigan without approval of the Court, parties may agree to a change of domicile by signing an agreement (stipulation). Once this agreement is put in the form of an Order, signed by the Judge and filed with the Court clerk, it will become an Order of the Court.

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

- (1) Contact the other parent and see if (s)he will agree to mediation; or
- (2) File a petition on your own, or contact an attorney to help you file the petition.

Notifying the Friend of the Court or filing a petition does not allow you to move your children from the state. You must obtain a Court Order granting this change.

Public Act 422 of 2000, effective January 9, 2001, amended the Child Custody Act to provide that a child whose parental custody is governed by Court Order has a legal residence with each parent. A parent of a child whose custody is governed by Court Order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence. The provision now restricts custodial and non-custodial parents alike from moving the child's residence.

A parent's change of a child's legal residence is not restricted if the other parent consents to, or if the Court permits, the residence change. The law does not apply if the Order governing the child's custody grants sole legal custody to one of the child's parents. Each Order determining or modifying custody or parenting time of a child is required to include a provision stating the parents' agreement as to how a change in either of the child's legal residences will be handled. If the parents do not agree on such a provision, the Court must include in the Order the following provision: "A parent whose custody or parenting time of a child is governed by this Order shall not change the legal residence of the child except in compliance with section 11 of the "Child Custody Act of 1970", 1970 PA 91, MCL 722.31."

The law does not apply if, at the time of the commencement of the action in which the custody Order is issued, the child's two residences were more than 100 miles apart. It also does not apply if the legal residence change results in the child's two legal residences being closer to each other than before the change.

QUESTIONS REGARDING MISCELLANEOUS ISSUES

Enforcement of Judge's Verbal Ruling

• Why won't the Friend of the Court enforce what the Judge said in Court, even if it's not in the written Order?

The Court speaks through its written Orders. The Friend of the Court can only enforce the written Order.

If you feel a Court Order does not agree with what the Judge said, bring your concerns to the attention of the person who prepared the written Order and request a change.

You can also file a motion with the Court to correct the written Order.

Property Settlement

• Can the Friend of the Court enforce the property settlement provisions contained in my Judgment of Divorce.

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

REFEREES

• What is a Friend of the Court Referee, and what can he/she do?

A Referee is a person who holds hearings, examines witnesses and makes recommendations to the Court.

The Chief Judge of a Circuit Court may appoint a Referee to hear any domestic relations issue, except an increase or decrease in spousal support.

A Referee hearing is different than a Court hearing. The findings of a Referee are recommendations to the Court, and are not final until signed by the Judge. A Referee's recommendation will become a Court Order if neither party files an objection within specific time limits.

State law requires that any written report and recommendation prepared by a Referee be given to the parties and his/her attorneys before the Judge takes action on the recommendation.

If a party disagrees with a Referee's recommendation (s)he has the right to a de novo (new) hearing before the Judge. The objection to the Referee's recommendation, and a request for hearing, must be made within 21 days from the time the Order is signed (a request for hearing on an income withholding Order must be made within 14 days).

Contact the Friend of the Court office or an attorney for an explanation of the way in which an objection and request for hearing should be filed.

ACCESS TO FRIEND OF THE COURT RECORDS

• I want to review my Friend of the Court file. How can I request this?

A Friend of the Court file is not a matter of public information. Parties, or their attorneys, must be given access to all information in their Friend of the Court records that is not confidential pursuant to Michigan Court Rule 3.218.

"Confidential Information" means:

- (a) Staff notes from investigations, mediation sessions and settlement conferences;
- (b) Department of Human Services protective services reports;
- (c) formal mediation records;
- (d) communications from minors;
- (e) Friend of the Court grievances filed by the other party;
- (f) a party's address or other information if release is prohibited by Court Order; and
- (g) all information classified as confidential by title IV-D of the Social Security Act.

The Friend of the Court may charge a fee for copying any records.

If the Friend of the Court denies you access to records regarding your case, you may file a motion with the Court for an Order of access.

Access to Other Records

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

Michigan law provides that a parent has the right to access certain records or information about his or her child regardless of the custody arrangement. Records or information which may be accessed include medical, dental, and school records, day care provider records, and notification of meetings regarding the child's education. 1996 PA 304 MCL 722.21 MSA 25.312 (1)(SB598).

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

Adoptions, Marriages and Other Acts of Emancipation.

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

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

Any amounts owed must still be paid. Contact the Friend of the Court to make arrangements to pay or collect any money owed.

Parent Locator

• What can the Friend of the Court do to find a missing parent?

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

- to collect child support;
- to decide or enforce a child custody matter;
- to enforce parenting time in cases of parental kidnapping.

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

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

COMPLAINTS

Friend of the Court

• How do I file a complaint about the Friend of the Court?

The Friend of the Court Act provides a grievance procedure for complaints about Friend of the Court operations or employees. A grievance cannot be used to object to a Friend of the Court recommendation, or to disagree with the decision of a Judge.

You can file a grievance in two ways:

- (1) File a grievance about office operations or employees with the appropriate Friend of the Court office by either:
 - (a) Filing a grievance form, which you can get from your Friend of the Court office; or
 - (b) Stating your concerns in a letter to the Friend of the Court and clearly identifying your letter as a grievance.

Within thirty days, the Friend of the Court must investigate and respond or issue a statement explaining why a response is not possible within that time.

If you are not satisfied with the response of the Friend of the Court, you may file the same grievance with the Chief Circuit Court Judge.

The Chief Circuit Court Judge also is required to investigate and respond to your grievance within thirty days unless a statement is issued explaining why a response is not possible within that time.

- (2) File a grievance about office operations with the Citizen Advisory Committee.

Grievances filed with the Citizen Advisory Committee may only concern office operations. Since the Committee's role is advisory only, it cannot decide the grievance. However, it can review, investigate, and hold hearings on the grievance for the purpose of reporting its findings on the performance of the Friend of the Court to the Chief Judge and the county board of commissioners.

The Friend of the Court grievance procedure ends with the process just described.

Court Order

• How do I file a complaint about my Court Order?

Court Orders are not covered under the Friend of the Court Act grievance procedure.

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

Judge

• How do I file a complaint about the conduct of a Judge?

The Judicial Tenure Commission reviews complaints about Judges.

Complaints concerning your Court Orders should not be sent to the Judicial Tenure Commission. It is not an appellate Court and cannot change the content of a Court Order.

If you have a complaint, contact:

Judicial Tenure Commission
Cadillac Place, 8th Floor, Suite 450
3034 West Grand Boulevard
PO Box 11319
Detroit, Michigan 48202

Attorney

• How do I file a complaint about my attorney?

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

If you have a complaint, contact:

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

AVAILABILITY OF HUMAN SERVICES

A list of local human service organizations may be available from the Friend of the Court office.

LEGAL ADVICE

The Friend of the Court does not represent either party in a domestic relations matter. Our concern is the best interests of the minor child. We can not give either party legal advice nor can we explain what your attorney has or has not done or why your attorney has or has not done something.

PHONE CALLS – CONFIDENTIALITY OF RECORDS

In order to protect the confidentiality of our records, information regarding the status of the case, payments, arrearage or enforcement action shall not be given over the telephone unless you have your docket or file number and/or social security number.

KIDNAPPING

Pursuant to Public Act 138 of the Public Acts of 1983, being section 350a of the Michigan Compiled Laws, an adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights pursuant to a lawful Court Order.

A violation of this Act is a felony.

TOLL-FREE TELEPHONE NUMBERS

To reach the Berrien County Courthouse in St. Joseph, Michigan

FROM:.....DIAL
Niles, Buchanan 684-5274
Three Oaks, New Buffalo, Lakeside,
Union Pier 756-9571

All of the above numbers are direct lines to the Berrien County Courthouse and all that is necessary is to dial the above number. You do not have to dial "1".

GLOSSARY OF FREQUENTLY USED TERMS:

Abatement- To reduce, diminish or temporarily suspend.

ADC or AFDC- Abbreviation for Aid to Families with Dependant Children. Replaced by Temporary Assistance to Needy Families (TANF) or Financial Independence Program (FIP).

Adjournment- The postponing or putting off of a case or session of Court until another time or place.

Adjudication- A final judicial determination by the giving of a judgment or a decree in a civil case.

Adoption- The act by which a person takes the child of another into his or her own family and makes the child, for all legal purposes, his or her own child.

Adversary Proceedings- Actions contested by opposing parties.

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

Aid to Families with Dependant Children- A program of public assistance to families, administered in Michigan by the Department of Human Services. Replaced by in Michigan by the Financial Independence Program (FIP), also called Temporary Assistance to Needy Families (TANF) by the federal government.

Alimony- See spousal support.

Alternative Dispute Resolution- A method to resolve disagreements without the direct intervention of the Court. See Arbitration, Conciliation, Mediation.

Appeal- An application to a higher Court requesting a change of the judgment of a lower Court.

Appellate Court- A Court which reviews lower Court decisions, generally on the record of the lower Court.

Appearance-

1. Coming into Court: The formal act by which a defendant submits to the jurisdiction of the Court.
2. Document identifying one who is representing himself or another. An attorney files an "appearance" making it known that (s)he is representing an individual.

Arbitration/Binding Mediation- A procedure for the determination of a disputed matter. Legally binding, as opposed to mediation.

Arrearage- Money which is overdue and unpaid.

Attorney- A lawyer; a person admitted to legal practice who is qualified to represent the legal interests of another person.

Bail Bond- A financial obligation which guarantees a person's future appearance in Court.

Bench Warrant- An Order issued by the Court(from the bench) for the arrest of a person, so that (s)he may be brought before the Court.

Burden of Proof- The duty to establish facts in a dispute. In civil matters, this burden may be a "preponderance of the evidence" or "clear and convincing evidence".

Caseload- The number of cases a Friend of the Court case worker handles at any given time.

Cash Bond- A payment of a specific amount of money to guarantee future support payments will be made.

Certified Copy- A copy of an Order signed and certified as an exact true copy by the officer of the Court having possession of the original Order.

Change of Venue- Transfer or removal of a case to a Court of another geographical location and jurisdiction, either because it should have been there in the first place, or for the convenience of the parties or witnesses, or because a fair trial cannot be had in the original Court location.

Chief Judge- In Courts with two or more Judges, one Judge is selected as Chief Judge. The Chief Judge is the director of the administration of the Court.

Child Abuse/Neglect- Mistreatment of a minor by an adult legally responsible for the minor.

Child Born Out-of-Wedlock- A child born to a woman who was not married from the conception to the date of birth, or a child which the Court has determined to have been born or conceived during a marriage, but is not the husband's child.

Child Support- Payment of money for a child in a divorce, paternity, or family support act proceeding. Support includes health care, and may include educational and child care expenses.

Child Support Formula- Factors considered by the Friend of the Court and the Prosecuting Attorney when making a recommendation, and by the Circuit Court when making a determination for an appropriate amount of child support. Both parents' incomes are considered under the formula.

Child Support Guidelines- See Child Support Formula.

Circuit Court- The trial Court in Michigan which hears many types of cases. Domestic relations actions are tried in the family division of this Court.

Commit- The act of sending a person to jail, pursuant to a Court Order.

Complaint- The original pleading in a domestic relations matter. In this pleading, the plaintiff alleges the basis for the suit and states the remedy requested.

Conciliation- A method of alternative Dispute Resolution utilized by many Friend of the Court offices. The conciliator attempts to assist parties in resolving disputes, but may prepare a recommendation if the parties are not able to reach agreement on issues. See Mediation.

Confinement Expenses- The medical costs for the birth of a child paid by Medicaid.

Contempt of Court Hearing- Also known as a "show cause" hearing. A Court hearing in which the person alleged to be in violation of the Court Order has the opportunity to show good cause why (s)he did not comply.

Counsel- An attorney.

Custody- Care and keeping of anything or anyone, i.e., children in a domestic relations action.

Defendant- The person against whom a lawsuit is started.

Delinquent- In regards to child support, an amount owed but not paid. (See Arrearage).

De Novo- A new hearing before a Judge.

Department of Human Services- The agency providing public assistance to families. Includes the Office of Child Support. Formerly known as the Michigan Department of Social Services and the Family Independence Agency.

District Court- All criminal cases are started in the district Court. The district Court hears all misdemeanors and civil cases under \$10,000, including small claims.

Dismissal- A Court Order terminating a particular case.

Divorce- The legal termination of a marriage.

Domestic Relations Action- Any action involving families. Divorce, paternity and family support actions are all considered

domestic relations actions.

Domicile- The permanent home to which a person, when absent, always intends to return. (See Residence).

DHS- An abbreviation for the Michigan Department of Human Services.

Emancipation- The act by which one attains adulthood. Emancipation may occur when a child reaches the age of majority, marries, enters military service, or by Court Order.

Enforcement- Activity engaged in by the Friend of the Court to bring an alleged violator of a Court Order into compliance.

Evidence- Proof allowed at a hearing. Evidence may be presented through testimony of witnesses and by documents, records and other material.

Ex Parte- On the request of one party only, without notice to any other party.

Ex Parte Order- An Order made by the Court upon the request of one party to an action without prior notice to the other party.

Fair Consideration- A payment which represents the value of the property or service transferred.

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

Fees- A charge fixed by law for services.

File- To put in the records of the Court.

Filing- The act of recording the various legal documents regarding a suit with the clerk of the Court.

FIP- Financial Independence Program. Michigan's name for the program which replaced Aid to Families with Dependent Children (AFDC or ADC). The federal government equivalent is now called Temporary Assistance to Needy Families.

Friend of the Court-

1. An office of the family division; investigates and makes recommendations to the Court in domestic relations actions involving minor children; enforces Orders of the Court; collects, records and disburses support payments.

2. A person; the director of the office.

Garnishment- A Court Order to take part of a person's wages or other money owed to him/her before (s)he receives the money, because of an unpaid debt owed a creditor.

Guardian- The person who has a legal duty and power to take care of another person who by age, or incompetence, is unable to care for him/herself.

Guardian Ad Litem- A person appointed by the Court during the course of a litigation for the purpose of protecting the interests of an infant or incompetent adult.

Hearsay- A statement made outside of the hearing. Most hearsay evidence is not allowed as evidence in Court.

Inactive Case- A case for which the Friend of the Court is no longer responsible for initiating enforcement, or other, services. May also be called a "closed case".

Income Withholding Order- An Order of the Circuit Court. It directs an employer, or source of income, to withhold a fixed amount and send that amount to the Friend of the Court for purposes of support.

Interstate Income Withholding Order- An Order entered to secure payment of support through an employer in another State.

Joint Custody- An Order of the family division which provides:

1. Parents will share in major decisions affecting their children (joint legal custody).

2. Children will live with one parent part of the time and the other parent part of the time (joint physical custody).

Judicial Tenure Commission- The panel which reviews and investigates complaints against Judges, and makes recommendations to the Supreme Court for discipline or removal, if appropriate.

Judgment- The decision of a Court.

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

LEIN- Law Enforcement Information Network. A computer system containing files on wanted persons.

Lien- A claim against real or personal property. The owner cannot sell the property without first paying the debt. It also subjects the property to seizure and sale.

Litigant- A party to a legal action.

Litigation- The process of resolving a dispute in Court.

Mediation-

(1) A process parties can use to reach their own agreements without going to Court. The Friend of the Court provides mediation services when there is a dispute regarding custody or parenting time.

(2) Binding Mediation- A procedure used to determine a disputed matter. The Mediator's decision is binding upon parties. See Arbitration.

Minor- A person under the age of 18 years.

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

Mutual Agreement- An arrangement reached by parties on their own free will without duress or coercion.

Obligor- A person who has a duty to do something. A support obligor is the person responsible for paying support.

Office of Child Support- The office within the Department of Human Services that administers Federal child support program funds, coordinates location of absent parents and manages the process for income tax intercepts. This office may also initiate complaints under the Paternity Act and the Family Support Act.

Order- A decision of the Court made in writing.

Parenting Time Order- An Order that establishes time between the children and the parent with whom (s)he does not primarily reside. Also known as a "visitation Order".

Party- A person legally involved in a particular action.

Paternity Suit- An action to prove who is the father of a child born to parents who are not married to one another.

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

Payer- The person who is ordered to remit support.

Petition- See Motion.

Plaintiff- The person who originally files the action.

Pleadings- Papers filed by parties in a lawsuit stating claims against each other, or his/her defenses to those claims.

Power of Attorney- A written instrument appointing and authorizing a person to act in the place of another as agent or substitute.

Pretrial Conference- Informal hearing between the Judge and attorneys (and sometimes parties) to discuss any matters that can be resolved prior to a Court hearing.

Probate Court- The Court which handles wills, estates, and commitment of mentally ill persons. In accordance with a family division plan, a probate Court Judge may be appointed by the Chief Circuit Court Judge to act as family division Judge.

Pro Per- A person who represents himself or herself in Court without an attorney. Also known as **Pro Se**.

PS- An abbreviation for the Protective Services unit of the Department of Human Services.

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

Recipient- A person or agency to whom support is paid. Also known as payee.

Reconciliation- When parties to domestic relations actions are attempting to work out his/her differences and remain as a family unit.

Referee- A person who holds hearings, takes testimony and makes recommendations for Orders to the Court. A Referee may be the person serving as the Friend of the Court, or an attorney appointed by the Court to hear domestic relations actions.

Residence- The place where one presently lives.

RURESA- An abbreviation for "Revised Uniform Reciprocal Enforcement of Support Act." Pertains to non-support actions against a parent in another state. Replaced by the Uniform Interstate Family Support Act (UIFSA).

Show Cause Hearing- A Court hearing which is held so that a person can present reasons why (s)he should not be considered in violation of a specific Court Order. Also known as a "Contempt of Court" hearing.

Sole Custody- An Order of the Court which provides that children reside with one parent, and that parent is responsible for all decisions affecting them.

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

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

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

Statutes- Laws of the State of Michigan enacted by the Legislature.

Stipulation- A mutual agreement between parties or their attorneys which resolves a particular issue.

Summons- A notice given to a party that a Court action has been started against them.

Support Order- An Order issued by the family division ordering the payment of money for children or spouse in a domestic relations action.

Supreme Court- The Court of last resort in Michigan, the highest appeals Court in the state.

Surcharge- A penalty assessed on support which is not paid timely.

Suspension- Held up or put on the shelf; temporarily stopped.

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

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

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

UIFSA- An abbreviation for "Uniform Interstate Family Support Act." Pertains to support actions where the parents do not live in the same state.

Venue- The county in which proceedings may be commenced. Also, see "Change of Venue".

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

Warrant- A paper issued by a Judge which allows police to arrest a person. (See Bench Warrant).

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