

Filing Fee \$20.00
If filed before Judgment

Filing Fee \$100.00
If filed Post Judgment

Filing for Motion Regarding Visitation/Parenting Time

Attention

If you need help completing these forms, you may contact the Self-Help Legal Resource Center at (269) 983-7111 Ext. 8790 (Ext. 6202 in Niles), or you may visit one of the offices at:

- **Berrien County Courthouse, 2nd Floor**
811 Port Street, St. Joseph, MI 49085
- **South County Courthouse**
1205 N. Front Street, Niles, MI 49120

Form included in this packet:

1. Motion Regarding Visitation/Parenting Time and Notice of Hearing (FC 061)
2. Response to Motion Regarding Visitation/Parenting Time (FC 062)



PROPER PERSON MOTION INSTRUCTIONS

Self Help Legal Resource Center
811 Port Street, St. Joseph, MI 49085 • 269.983.7111
1205 N. Front Street, Niles, MI 49120 • 269.684.5274 Ext. 6202

To file a **Motion to change visitation/parenting time**, you can get the required forms from the Friend of the Court, the Self Help Legal Resource Center and/or the Family Division File Room at the Courthouse in St. Joseph, or at the County Clerk's office in the South County Building in Niles. If you live out of Berrien County, you can request the Friend of the Court send these forms to you.

There is a fee of \$100.00 for filing and entry of the Order. If you are filing a Motion for more than one case (example: against two different people, or in two different cases) the fee is \$100.00 per case. Checks should be made payable to Berrien County Clerk.

You will be required to mail the other party a copy of your Motion. If you would like the Clerk to mail this for you there is an additional charge of \$1.00 per case.

INSTRUCTIONS FOR FILING A MOTION/ RESPONSE IN PERSON:

1. Fill in your FULL CASE NUMBER in the upper right box on the MOTION form and the RESPONSE form.
2. Fill in your FULL NAME, ADDRESS, the OTHER PARTY'S NAME, ADDRESS in the PLAINTIFF and DEFENDANT BOXES on the MOTION and the RESPONSE forms. **The RESPONSE form is now finished, do not fill out anything else.**
3. Fill out the MOTION, answering all questions completely, clearly stating what has changed since the last Parenting Time Order and why it is in your child's best interest to change the Parenting Time Order. DATE the Motion and SIGN your name to the Motion.
4. Give the MOTION to the FILE CLERK in the FILE ROOM and pay the filing fee. The File Clerk will get a hearing date and complete the Notice of Hearing section for you.
5. The File Clerk will give you two copies of your MOTION. You must mail one copy of your MOTION and the RESPONSE form with instructions, to the other party. If you choose, you can pay \$1.00 and the Clerk will mail the forms to the other party. **NOTE: The Court will put YOUR RETURN ADDRESS on the envelope. It will be your responsibility to contact the F.O.C. if the forms are returned to you by the Post Office as undeliverable to the other party.**

INSTRUCTIONS FOR FILING A MOTION/RESPONSE BY MAIL:

1. If you live out of Berrien County, call the Friend of the Court Office and ask them to mail you the required forms for the type of Motion you wish to file.
2. Once you receive the forms, follow steps #1-3 above. Send all completed forms to Berrien County Courthouse Family Division File Room, 811 Port Street, St. Joseph, MI 49085. **DO NOT SEPARATE THE FORMS.** You will receive a copy back by mail, once a hearing date has been set.
3. Enclose a check or money order for **\$101.00** made payable to Berrien County Clerk for filing, entry of the Order and mailing fees. Continue with the instructions below.

AFTER FILING A MOTION:

1. Immediately fill out and return any questionnaires or other forms sent by the Friend of the Court Office. **PLEASE RETURN QUESTIONNAIRES TO FRIEND OF THE COURT OFFICE. IF YOU DO NOT RETURN THE REQUIRED INFORMATION (QUESTIONNAIRES AND PAY STUBS/TAX RETURNS), THE COURT MAY DISMISS THE MOTION.**
2. **SHOW UP AT THE HEARING!** Even if the other party agrees to your Motion, you must still be present. For support issues, the F.O.C. is required to make a support recommendation pursuant to the Michigan Child Support Guidelines. This recommendation will be given to the Court and parties at or before the hearing. This recommendation must be considered by the Court even if the parties agree to a different amount of child support.

INSTRUCTIONS FOR FILING RESPONSE TO MOTION

You may respond to the enclosed Motion which has been filed in Berrien County Trial Court Family Division. Enclosed is a RESPONSE TO MOTION form to do this.

1. Completely fill out RESPONSE form, answering all questions. DATE and SIGN the response form.
2. DATE, SIGN, and PRINT your name under the Certificate of Mailing section.
3. Mail the RESPONSE form to the:
Berrien County Courthouse
Family Division
811 Port Street
St. Joseph, MI 49085
4. You may also deliver it in person to the Family Division File Room in St. Joseph or the Clerk's Office in Niles at the South County Building located at 1205 N. Front St., Niles, MI 49120.
5. **Immediately fill out and return any questionnaires or other forms sent by the Friend of the Court office. PLEASE RETURN ALL QUESTIONNAIRES TO THE FRIEND OF THE COURT OFFICE PRIOR TO THE HEARING DATE!**
6. **SHOW UP AT THE HEARING** even if you agree to the terms of the Motion. REMEMBER: the Friend of the Court does not represent either party.



CHILD CUSTODY ACT OF 1970 (EXCERPT) ACT 91 OF 1970

Self Help Legal Resource Center
811 Port Street, St. Joseph, MI 49085 • 269.983.7111
1205 N. Front Street, Niles, MI 49120 • 269.684.5274 Ext. 6202

722.23 “Best interests of the child” defined.

Sec. 3.

As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the Court:

- (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.



CHILD CUSTODY ACT OF 1970 (EXCERPT) ACT 91 OF 1970

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722.27a “Parenting Time” defined.

Sec. 7a.

1. Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.
2. If the parents of a child agree on parenting time terms, the Court shall order the parenting time terms unless the Court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child.
3. A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child’s physical, mental, or emotional health.
4. Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which one (1) of the child’s biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520e and 750.520g of the Michigan Compiled Laws, the Court shall not grant parenting time to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.
5. Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual’s child, the Court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child’s other parent and, if the Court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.
6. The Court 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 six (6) months of age, or less than one (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 for purposes of parenting time.
 - f. Whether a parent can reasonably be expected to exercise parenting time in accordance with the Court Order.

- g. Whether a 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.
7. Parenting time shall be granted in specific terms if requested by either party at any time.
8. A parenting time Order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including one (1) or more of the following:
 - a. Division of the responsibility to transport the child.
 - b. Division of the cost of transporting the child.
 - c. Restrictions on the presence of third persons during parenting time.
 - d. Requirements that the child be ready for parenting time at a specific time.
 - e. Requirements that the parent arrive for parenting time and return the child from parenting time at specific times.
 - f. Requirements that parenting time occur in the presence of a third person or agency.
 - g. Requirements that a party post a bond to assure compliance with a parenting time Order.
 - h. Requirements of reasonable notice when parenting time will not occur.
 - i. Any other reasonable condition determined to be appropriate in the particular case.
9. During the time a child is with a parent to whom parenting time has been awarded, that parent shall decide all routine matters concerning the child.
10. Prior to entry of a temporary Order, a parent may seek an ex parte interim Order concerning parenting time. If the Court enters an ex parte interim Order concerning parenting time, the party on whose motion the ex parte interim Order is entered shall have a true copy of the Order served on the Friend of the Court and the opposing party.
11. If the opposing party objects to the ex parte interim Order, he or she shall file with the Clerk of the Court within fourteen (14) days after receiving notice of the Order a written objection to, or a motion to modify or rescind, the ex parte interim Order. The opposing party shall have a true copy of the written objection or motion served on the Friend of the Court and the party who obtained the ex parte interim Order.
12. If the opposing party files a written objection to the ex parte interim Order, the Friend of the Court shall attempt to resolve the dispute within fourteen (14) days after receiving it. If the matter cannot be resolved, the Friend of the Court shall provide the opposing party with a form motion and Order with written instructions for their use in modifying or rescinding the ex parte Order without assistance of counsel. If the opposing party wishes to proceed without assistance of counsel, the Friend of the Court shall schedule a hearing with the Court that shall be held within twenty-one (21) days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim Order and requests a hearing, the Court shall resolve the dispute within twenty (28) days after the hearing is requested.

13. An ex parte interim Order issued under this section shall contain the following notice:

- a. You may file a written objection to this Order or a motion to modify or rescind this Order. You must file the written objection or motion with the Clerk of the Court within fourteen (14) days after you were served with this Order. You must serve a true copy of the objection or motion on the Friend of the Court and the party who obtained the Order.
- b. If you file a written objection, the Friend of the Court must try to resolve the dispute. If the Friend of the Court cannot resolve the dispute and if you wish to bring the matter before the Court without the assistance of counsel, the Friend of the Court must provide you with form pleadings and written instructions and must schedule a hearing with the Court.

<p align="center">STATE OF MICHIGAN 2ND JUDICIAL CIRCUIT BERRIEN COUNTY</p>	<p align="center">MOTION REGARDING VISITATION/PARENTING TIME AND NOTICE OF HEARING</p>	<p align="center">CASE NO.</p>
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Court Address

Court telephone no.

- Berrien County Courthouse, 811 Port Street, St. Joseph, MI 49085-1188 (269) 983-7111
- South County Building, 1205 North Front Street, Niles, MI 49120-1699..... (269) 684-5274

Please print or type information

Plaintiff's name, address, and telephone no:

Date: _____

Motion of: _____
Party

V

Defendant's name, address, and telephone no:

Attorney: _____
For Plaintiff

Attorney: _____
For Defendant

1. At the present time:
 - a. There is no Order regarding visitation/parenting time in this case. (Go to #3)
 - b. There is an Order regarding visitation/parenting time in this case. (Go to #2)
2. The current Order for Visitation/Parenting Time states: [check one] Plaintiff Defendant has visitation/parenting time as follows: [Check one below and go to #4]
 - a. Reasonable rights of visitation/parenting time
 - b. Specific visitation/parenting time set out in the Court Order
 - c. Supervised visitation/parenting time
 - d. Other (briefly describe): _____

3. The Plaintiff Defendant requests that the Court grant an Order for visitation/parenting time as follows: [briefly describe what you are asking the Court to do] _____

4. The Plaintiff Defendant requests that the Visitation/Parenting Time Order be changed. The change being requested is: [briefly describe what you are asking the Court to do] _____

5. Describe the reason(s) for the court to take this action: _____

6. The Plaintiff Defendant also requests that the following visitation/parenting time matters be addressed by the Court:

7. The moving party requests the Court grant an Order consistent with the request contained in this Motion.

Date: _____
_____ Plaintiff/Defendant

NOTICE OF HEARING

[Print name and address]
Plaintiff/Plaintiff's Atty.

[Print name and address]
Defendant/Defendant's Atty.

Friend of the Court
Berrien County Courthouse
811 Port Street, Room 401
St. Joseph, MI 49085-1192

Friend of the Court
South County Building
1205 N. Front Street
Niles, MI 49120

PLEASE TAKE NOTICE that this Motion Regarding Visitation/Parenting Time shall be heard by

JUDGE/REFEREE _____ on _____ at _____
Name Date Time

or as soon thereafter as the matter may be heard at Berrien County Courthouse St. Joseph, Niles, Michigan.

Date: _____
_____ Plaintiff/Defendant

CERTIFICATE OF MAILING

I, _____ (name), hereby certify that on this date set out below, a true copy of the Motion Regarding Visitation/Parenting Time and Notice of Hearing were mailed to the parties and their attorneys at the addresses set forth above by first class mail with appropriate postage affixed thereon.

Date: _____
_____ Plaintiff/Defendant

<p align="center">STATE OF MICHIGAN 2ND JUDICIAL CIRCUIT BERRIEN COUNTY</p>	<p align="center">RESPONSE TO MOTION REGARDING VISITATION/PARENTING TIME</p>	<p align="center">CASE NO.</p>
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Court Address

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Please print or type information

Plaintiff's name, address, and telephone no:

Date: _____

I, _____
Name of party filing response

v

state:

Defendant's name, address, and telephone no:

1. I agree to the change being asked for in the motion.

2. I do not agree to the change being asked for in the motion because:

[briefly describe why you object to the Motion]: _____

Date: _____

Signature of party filing RESPONSE

CERTIFICATE OF MAILING

I, _____ (name), hereby certify that on this date set out below, a true copy of this Response to Motion Regarding Visitation/Parenting Time was mailed to the other party at the addresses stated above by first class mail with appropriate postage affixed thereon.

Date: _____

Signature

Name (type or print)