

**48th Judicial
Circuit Court**

**FRIEND OF THE COURT
HANDBOOK**

**ALLEGAN COUNTY
FRIEND OF THE COURT**

P.O. Box 358
Allegan, Michigan 49010
Telephone 269-673-0330
Fax: 269-673-0322

TABLE OF CONTENTS

THE OFFICE OF THE FRIEND OF THE COURT	3
TELEPHONE VOICE RESPONSE SYSTEM	4
PROCEDURES OF THE COURT	5
Plaintiff's Complaint	5
Service.....	5
Defendant's Answer to Complaint	5
DOMESTIC RELATIONS PROCESS.....	6
Divorce.....	6
Ex-Parte Orders (orders entered by the court without the benefit of a hearing).....	7
Temporary Orders.....	7
Reconciliation's and Dismissals	7
Judgment	7
Modification of a Judgment	7
Family Support Actions	8
Paternity Actions.....	8
Interstate Actions	9
Parent Locator	9
RIGHTS AND RESPONSIBILITIES OF THE PARTIES	10
DUTIES OF THE FRIEND OF THE COURT.....	11
Mediation	11
Custody	11
Support Orders	13
Support Investigations and Reports	13
Child Support Guideline	13
Accounting.....	14
Receiving Support.....	14
Automatic Support Enforcement	14
Enforcement of Support.....	15
Immediate Income Withholding	15
Modification of a Support Order.....	16
Support Modification Actions Started by Parties	16
Parenting Time Orders.....	18
Parenting time Enforcement	18
Supplement to DHS-Pub 748.....	23

DISCLAIMER

This handbook, while required by law, is not a legal document, and is not intended to provide legal advice to you.

Nothing in this Handbook changes the existing law of the State of Michigan, the Michigan Court rules or local Court rules.

FRIEND OF THE COURT HANDBOOK

The purpose of this handbook is to provide persons who have a domestic relations case in a circuit court with helpful and accurate information regarding Friend of the Court duties and responsibilities including the federal child support enforcement program (also known as the IV-D program). This handbook also outlines the basic responsibilities of parties when the court has issued an order for support, parenting time or custody. Any questions regarding procedures or requirements outlined in this handbook may be discussed with your local Friend of the court or with the attorney of your choice.

THE OFFICE OF THE FRIEND OF THE COURT

The Friend of the Court office was created by Michigan law and there is at least one office for each circuit court. The Friend of the Court has the following duties according to the law:

1. To investigate, report and make recommendations to the court on these matters: a) Custody) Parenting time; and) Amount of support.
2. To provide mediation as another way of settling disagreements over custody and parenting time of children.
3. To collect, record and send out all support payments ordered by the court.
4. To enforce all custody orders entered by the court.
5. To enforce all parenting time orders entered by the court.
6. To enforce all support orders entered by the court.

TELEPHONE VOICE RESPONSE SYSTEM

As of September 1, 1994 the Allegan Friend the Court Office acquired a Voice Response System, which will enable this office to more effectively assist our clients to obtain information pertaining to their case or cases. The information you will be able to access through the Voice Response System is as follows:

Press 1 for English

MAIN MENU

Press 1 Child Support or Enforcement Information

Press 2 General Information

Press 3 Name or Address Changes

Press 4 Coupons/Direct Deposit/Redirection Information

Press 5 If you are an employer or wish to speak with your Enforcement Officer

- Press 1 Barb Simons
- Press 2 Hickory Buell
- Press 3 Jody Sebright
- Press 4 Beverly Stamper
- Press 5 Linda Nevenzel (Medical)

Press 7 Received Letter on unclaimed property or money

Press 9 If you know your party's extension

Press 0 Customer Service Representative

The voice response system is a twenty-four hour (24), seven (7) day a week program. This allows you unlimited access to your account.

You do not have to listen to the complete message if you know the directory numbers for the areas that interest you.

Extension numbers will not be given out by anyone from the Friend of the Court staff, however you have the ability to speak with an enforcement officer (option #4 from the Main Menu) simply by pressing the number that applies to your enforcement officer.

The voice response will give you current payment information on your case.

PROCEDURES OF THE COURT

Any individual wishing to start a domestic relation's action must file the correct papers in the circuit court according to specific rules (Michigan Court Rules). There may be many complicated issues or rules involved in a domestic relation's case. Although the court cannot require a party to use an attorney to start or respond to an action, it may be advisable to have an attorney file the correct papers and follow specific rules.

Plaintiff's Complaint

Every domestic relation's matter begins with the plaintiff filing a complaint or petition, which asks the court to grant an order. For example, a complaint may ask the court to grant a divorce, provide for child support or spousal support (alimony), start an out-of-state support collection effort, or grant an order for custody of a child. The defendant is the person whom the complaint is filed against.

Service

The court rules provide that the defendant be served with a copy of the complaint and summons. The summons is a document, which legally asks the person complained against to answer the complaint. This must be delivered to that person in such a way as to give them notice of the action against them. The most typical ways to give notice are for a third party to personally hand the papers to the defendant or by mailing them as required by Michigan Court Rule.

Defendant's Answer to Complaint

If the person served does not file an answer to the complaint within the time permitted by Michigan Court Rule, they may lose the right to have their concerns heard by the court. This could result in the court entering an order giving the plaintiff everything he or she requested in the complaint.

DOMESTIC RELATIONS PROCESS

Divorce

A person wanting to end his or her marriage must have a circuit court enter an order ending the marriage. To grant the divorce, the court must find that there has been a breakdown in the marriage relationship to the extent that the parties cannot live together as husband and wife. At least one of the parties must appear in court to show that this breakdown really does exist. In Michigan, a divorce can be granted even if one of the parties does not want the divorce. A divorce ends the legal relationship between a husband and wife. The divorce does not end the family relationship, even though the relationship will change.

1. Many decisions must be made before a divorce is granted. These decisions may include:
2. Who will make decisions, provide daily guidance and take care of the children? (Custody)
3. What contact will children have with a parent they don't live with? (Parenting time)
4. How should the property gathered during the marriage be divided? (Property settlement)
5. How will financial responsibilities for the children be divided? (Child support)
6. What amount, if any, should one party contribute towards the support of the other, either permanently or temporarily? (Spousal support/alimony)
7. How will the children's medical, dental and other health care expenses be paid? (Health care coverage)
8. Will the wife take back her maiden name? (Restoration of maiden name)
9. Will children be allowed to move from the State of Michigan? (Domicile)

Divorce issues may be resolved in the following ways

1. The parties may be able to reach an agreement by themselves or by talking to their attorneys.
2. Mediation is available through the Friend of the Court and private agencies to resolve the issues of custody and parenting time.
3. In some counties, a Friend of the Court referee may hear the issues and make a recommendation to the judge.
4. The judge may help in settling a matter by having a pretrial or settlement conference.
5. The judge will hold a hearing or trial on the issues that have not been resolved.

Copies of all papers filed in a case must be given to the court clerk by the person bringing the action or by his or her attorney who will then provide a copy to the Friend of the Court. Recommendations on custody, parenting time and child support will be made by the Friend of the Court office, if the circuit court orders the office to do so.

Ex-Parte Orders (orders entered by the court without the benefit of a hearing)

In some cases a court may immediately enter custody, parenting time or child support order upon the request of one of the parties. If a party disagrees with an ex-parte order, they must request the court to hold a hearing to change the ex-parte order by filing a motion within 14 days after they receive the order. If a motion is not filed within 14 days, the order automatically becomes a temporary order.

Temporary Orders

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

If a hearing before a referee or judge is scheduled, both parties will be notified of the time and place. On that date, they can present their position to the court. The decision made at that hearing by the court is written down by one of the attorneys. This is given to the judge for entry (signing the order), and made an order of the court. NOTE: Only a judge can enter orders or judgments; a referee can hear motions, but can only recommend orders to the judge (See Referee section).

Reconciliation's and Dismissals

Not every divorce matter that is started ends in a divorce. If the parties are attempting to work out their differences and wish to have enforcement of their court orders suspended, they must provide the court and the Friend of the Court with written notice of their reconciliation. A reconciliation notice does not dismiss a divorce action or suspend a court order.

If the parties have resolved their differences and wish to stop the divorce action, they must file an order of dismissal with the circuit court and provide a copy to the Friend of the Court. Plans to pay any back child support owed to the state must be made with the Friend of the Court.

Judgment

A judgment contains the orders of the court, which address support, parenting time, custody, property and other related issues.

From the date of filing the complaint there is sixty-day waiting period for divorce cases without children and a six month waiting period for divorces where there are minor children.

After the waiting period is over the judge may grant a divorce. Some of the sections in the divorce judgment can be changed by the judge after it has been entered (See Modification of Judgment). Once a judgment has been entered, parties must comply with its terms.

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

Modification of a Judgment

After a judgment has been entered in a divorce action, there are some orders that can be modified (changed). These could include: custody, parenting time, support, and domicile. A change can only occur if: 1) both parties have signed an agreement (stipulation and consent agreement which, if approved by the court will be entered as an order; or 2) a motion has been filed, a hearing has been held and the court enters an order granting a change.

The Friend of the Court has a responsibility to petition the court in certain circumstances for child support and parenting time modification (see Child Support section on page 22 and Parenting time section on page 26).

Family Support Actions

A person who is separated from his or her partner with no divorce pending and who has a minor child living with them may seek to establish a family support order under the Family Support Act (this is referred to as an order of support). Generally, family support actions are started after a referral by 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 contact a private attorney to file an action.

The Friend of the Court has the responsibility to enforce all orders of support. If the parents get back together and decide to end the family support order, they must contact the Friend of the Court or their attorney to obtain an order of dismissal. Notifying a Department of Human Services case worker does not end the court's support order.

When the Friend of the Court receives the order of dismissal, the family support order will stop. If children have received public assistance, plans to pay any back support owed to the state must be made with the Friend of the Court.

Either parent may begin a divorce action even though the court has ordered support in a family support action. The family support order will end upon entry of a Judgment of Divorce. A copy of the Judgment of Divorce must be provided to the Friend of the Court. If back support is owed under the family support action, plans to pay the back support must be made with the Friend of the Court.

If the parties have a family support order and have also filed for divorce, and decide to stop the divorce action, they must file an order of dismissal. Filing an order to dismiss the divorce will not end the family support order.

Paternity Actions

A paternity action is where the mother of a child identifies the father. This action begins with the Department of Human Services or an attorney, is sent to the Friend of the Court of the Court office, and is filed in the circuit court for determination. Upon the court's ruling, a *Judgment of Filiation* is entered and becomes the Order to be followed.

Parenting Time (provision for the non-custodial parent to see the child/ren) is generally ordered in paternity suits and the Friend of the Court helps with problems to assist both parties.

The non-custodial parent may have to pay *medical and hospital expenses* related to the birth of a baby, as well as child support. The non-custodial parent may be ordered to pay these expenses through the Michigan Support Disbursement Unit. The amount of the bill may not be known at the time of the court order.

The first support payment is due on the date of Judgment of Filiation; unless the Judgment says payments will start on a different date. Don't wait to find out if the Friend of the Court has opened an account for you. Start setting aside your support money every week and keep contacting the Friend of the Court to find out if your account is open. Then, send in all the support money you have been saving.

If the mother and father marry after the Judgment of Filiation, they should mail a copy of the marriage license to the Friend of the Court to close the case after arrangements are made to pay all money owed to any public agency.

Interstate Actions

If you are required to pay support and leave the State of Michigan you must continue to pay support through the Friend of the Court. If those payments stop, the parent receiving support can ask the court in the state where you live to take action to enforce support.

To start an out-of-state support action, you may go to an attorney to file the action or contact the Child Support Unit of your local Michigan Department of Human Services. They will refer you to the Friend of the Court's Office. The Friend of the Court office will file the action and begin the process of enforcement. To begin the action, you should have the full name, date of birth, social security number and the last known address of the person who should be paying support. If you are not sure where the other person lives, the Department of Human Services office must locate him/her before action is taken by the court.

After the parent is located, the responding state (the state where the parent who should be paying support lives) will try to serve the party and bring him/her into court.

Criminal non-support warrants can be issued by the Prosecuting Attorney's Office in some cases where the interstate method has not worked.

Parent Locator

The federal government has set up a federal parent locating service and has required other state agencies to participate.

The service can be used to:

1. Locate a parent to collect child support;
2. Locate a parent for deciding or enforcing a child custody matter;
3. Locate a parent in cases of parental kidnapping.

The Friend of the Court is the agency that can ask to use this service. The full name, date of birth, social security number, and last known address of the parent to be located is required.

If you can't find the other parent, contact the Friend of the Court.

RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Each party has the right to:

1. Expect the Friend of the Court to perform the duties listed in this pamphlet.
2. Request the Friend of the Court office to explain its procedures.
3. Be treated with courtesy by Friend of the Court employees.
4. File a grievance with the Friend of the Court office concerning an employee or office procedure.
5. Consult an attorney regarding questions or concerns.

Each party has the responsibility to:

1. Inform the Friend of the Court, in writing, of the following information:
 - (a) Current address;
 - (b) Current income status or source of income;
 - (c) Current children's residence; and
 - (d) Current information regarding health care coverage availability as a benefit of employment or maintained by each party.
2. Provide information to the Friend of the Court office to assist it in carrying out its duties as required by law.
3. Obey all orders of the court unless changed by the court.
4. Keep appointments made with the office, or take the time to reschedule an appointment.
5. Treat the Friend of the Court employees with courtesy.

DUTIES OF THE FRIEND OF THE COURT

Mediation

The friend of the Court is required by law to make mediation services available to parties when there is a dispute as to custody or parenting time.

Mediation is a process parties can use to reach their own agreements without going to court. The law requires that both parties agree to use mediation. The mediator is a neutral person who helps the parties reach an agreement. The mediator cannot reveal to the court or anyone else the discussions the parties had during the mediation process. The person who mediates in the case cannot investigate any disputes between the parties or enforce any court orders regarding the case.

Custody

A custody order specifies with whom the child shall live. In deciding custody, the court must consider all of the following factors of the Michigan Child Custody Act:

- (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 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 or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court 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 relevant to a particular child custody dispute.

CUSTODY QUESTIONS AND ANSWERS

1. How do I get an order for custody?

A petition must be filed requesting the court to grant you custody of your children. If both parents agree and sign any agreement (stipulation and consent agreement), that agreement, if approved by the court, may be entered as a custody order.

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

A petition must be filed to modify a custody order with the court, or the parents can sign a written agreement changing custody (stipulation and consent agreement), which if approved by the court, will change custody.

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

It is not required that you have an attorney to file a petition for custody. However, there are many complicated issues involved in a custody case. Therefore, you may want to have an attorney represent you. The Friend of the Court cannot file a petition for custody for you.

4. Is there any way the court can assist parties in reaching an agreement on custody?

The Friend of the Court is required to provide domestic relations mediation. Mediation is a process where a neutral third party assists in voluntarily settling a custody dispute. Both parties must agree to participate in this process.

5. Are there different kinds of custody?

Yes, a number of custody arrangements are possible. The most common are:

(A) Joint Custody: Joint custody means an order of the court in which one or both of the following are provided:

(1) That the children live with one parent part of the time and with the other parent part of the time.

(2) That the parents both share in making decisions on important issues dealing with the children.

(B) Sole Custody: An order of the court which state that the children live with one parent

And that parent is responsible for making decisions on important issues dealing with the child.

6. 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.

(2) Conduct an investigation and file a written report and recommendation to the court based on the factors listed in the Michigan Child Custody Act.

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

Before the court takes any action on a Friend of the Court custody recommendation, the Friend of the Court must provide to each party or their attorney a copy of the report and recommendation.

8. What will happen if I have an order for custody and the other parent does not return the Child to me as stated in the court order?

You have several choices:

- (1) You can contact the Friend of the Court and request that they enforce your order.
- (2) You can contact your attorney.
- (3) You can contact the Police and request that a kidnapping charge be pursued if you have reason to believe that the other parent intends to keep the child.

9. Does the Friend of the Court have a responsibility to investigate alleged abuse and or neglect of a child?

Allegations of abuse or neglect should be reported to the Protective Services unit of your local Child Protective Services Agency office.

The Friend of the Court has a responsibility to conduct an investigation when a party files a parenting time or custody petition. Allegations of abuse or neglect should be communicated to the Friend of the Court during the investigating process.

Support Orders

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

Support may include: 1) child support; 2) spousal support (alimony); 3) payment of expenses of medical, dental and other health care; 4) child care expenses; and 5) educational expenses.

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

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

Support Investigations and Reports

If ordered by the court, the Friend of the Court will conduct a financial investigation and make a written report and recommendation to the parties and the court regarding child support. Friend of the Court reports cannot be used as evidence in court without the agreement of both parties. However, the Friend of the Court investigator may be called as a witness to testify about their report and recommendation.

Child Support Guideline

State and federal law requires that a child support guideline be used by Friends of the Court, prosecuting attorneys and judges when recommending or ordering appropriate child support amounts. Friends of the

Court and judges may deviate from using the guideline if they determine that use of the guideline would result in an unjust or inappropriate order. Reasons for deviation must be set forth in a report and recommendation by the Friend of the Court and on the record or in writing by the court.

In Michigan, a child support guideline has been developed which considers both the non-custodial and custodial parent's income.

For more information about the child support guideline currently in use, you may contact either the Friend of the Court or your attorney. A copy of the guideline may be available at your local library.

To obtain a copy of the Michigan Child Support Guideline, contact:

Department of Management and Budget
Office Services Division
Publications Section
7461 Crowner Drive
Lansing, MI 48913

Accounting

The Friend of the Court, unless otherwise ordered by the court, has the responsibility to collect and forward child and spousal support (alimony) to the payee.

State law requires Michigan Support Disbursement Unit to receive record and send out all support payments due, current and past due not less than once each month.

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

Payments for support may be made by electronic funds transfer (EFT), personal check, money order, income withholding or in person at the Michigan Support Disbursement Unit office. Cash payments should not be mailed.

Receiving Support

The Michigan Support Disbursement Unit (MISDU) is now using direct deposit, also known as electronic funds transfer to deposit your child support payments directly into your account. To verify payments you may call your financial institution or the MISDU voice response system. The voice response system will give you the date the payment was posted to your FOC case. In most instances the payments will be available at your financial institution within three business days after being posted to your FOC case. You must provide the MISDU with a bank account number either checking or savings, to receive payment by direct deposit.

The MISDU is required to distribute support in accordance with federal regulations. You may contact the MISDU to receive information regarding distribution requirements.

Automatic Support Enforcement

The Friend of the Court is required to automatically begin enforcement action against a parent paying support. This is to be done without waiting for complaint or request for enforcement from the person receiving support.

Enforcement of Support

The Friend of the Court has many options available to enforce delinquent support orders. These options include:

1. Income Withholding Orders

An income withholding order requires the payer's (person required to pay support) employer or other source of income to withhold support from his or her paycheck. After January 1, 1991 all support orders issued in the State of Michigan must provide for an order of income withholding.

If the payer lives out of state, and gets behind in making his or her support payments, the Friend of the Court may begin an interstate action (See Interstate section on page II).

2. Show Cause Hearing

If an order for income withholding does not work, the Friend of the Court may begin a civil contempt proceeding by filing a petition with the court for an order to show cause.

If a show cause hearing is held and the payer appears, the judge will decide whether the person is in contempt and what action should be taken. The payer of support has a right to be represented by an attorney. If it appears that the court may jail the payer, the court is required to appoint an attorney for payers who cannot afford to pay for counsel.

If the show cause hearing is held and the payer does not appear, the judge may issue a bench warrant for the payer's arrest.

Once the court issues a bench warrant, the responsibility for the payer's arrest lies with the local law enforcement agencies.

3. Tax Intercept

If back child support is owed, the Friend of the Court may request an income tax offset for cases that qualify under the federal IV-D program.

A tax offset is where any tax refund owed to a payer is sent to the Friend of the Court and applied to back child support.

For more information contact the Friend of the Court.

4. Liens

In some cases, the Friend of the Court may be able to obtain a lien on a payer's property. For more information, contact the Friend of the Court office.

Immediate Income Withholding

Effective January 1, 1991, all new and modified support orders must provide for immediate income withholding. A delinquency does not have to occur before income withholding takes place. The support money is taken directly from the payer's check similar to the deductions for income taxes and social security payments. In some limited circumstances the parties may agree in writing not to invoke the immediate income withholding clause of their child support order. Also, the court has the authority to delay immediate income withholding if the court finds that it would not be in the best interest of the child (good cause exception).

For non-modified support orders entered prior to January 1, 1991, the law provides for automatic support enforcement to be used if the payer of support gets more than a month behind in making his or her payments. See Automatic Support Enforcement section on page 20 above for more information.

Modification of a Support Order

The Friend of the Court is required by state law to review child support orders as follows:

1. Not less than once every three years if the children for whom support is being paid are receiving public assistance.
2. When on its own finding or initiative, the Friend of the Court office determines that the amount of the child support order should be changed.
3. Upon a written request from a party, not more than once every three years.

The office must complete its support review and make a copy of its recommendations and supporting document available to the parties or their attorneys.

If the office finds that an increase or decrease is appropriate, the Friend of the Court will send each party a copy of a recommendation, the parties each have 21 days to file a written objection with the Friend of the court office. If an objection is received a hearing will be scheduled in front of the Attorney/Referee in the Friend of the Court office. If no objection is received the recommendation will be sent to the appropriate judge to be entered as a modified support order.

Support Modification Actions Started by Parties

If both parties agree to a change in the support order, they must submit a signed agreement with the Friend of the Court office. The enforcement officer will then schedule an office appointment for both parties to appear and sign a stipulated or consent order.

This agreement will be entered as a support order if approved by the court.

A party can file a motion for a change in their support order on their own or with an attorney. The Friend of the Court has forms and instructions available if a party is interested in filing a motion on their own. A party may contact an attorney to file a motion for a change in support on their behalf.

QUESTIONS AND ANSWERS REGARDING SUPPORT

1. How do I get an order for support?

A petition requesting the court to grant an order for support must be filed with the court. If both parties agree and sign an agreement (stipulation and consent agreement), that agreement will be entered as a support order if it is approved by the court.

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

It is not required that you have an attorney to file a petition for support. However, an attorney may be helpful when filing papers and following specific rules. For paternity and family support actions, the Department of Human Services may submit a referral to the Allegan County Friend of the Court Office.

3. Does the judge have to use the Child Support Guideline or the Friend of the Court? recommendations when setting support orders?

In most cases, yes. The Child Support Guideline and the Friend of the Court recommendation are used to assist the judge in making a decision concerning support amounts. In some cases the court may order an amount other than that recommended by the guideline, but the court must state on the record the reasons for not following the guideline.

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

Yes, parenting time and support are separate orders of the court, with separate enforcement procedures (See Parenting time Enforcement section on page 26).

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

Contact the Friend of the Court and request enforcement if the back support equals payments of one month. You may also contact an attorney to file an enforcement action.

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

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

- 1) Petitioning the court for a show cause hearing.
- (2) Filing a lien on the payer's property.

Contact your Friend of the Court office for further information concerning the options.

7. My court order states that I am to pay support through the Friend of the Court office. Can I pay the support to the custodial parent directly?

Not without changing your court order. Support is paid through the Friend of the Court to maintain an official record of payments. If you want credit for payments made directly to the custodial parent, you must obtain a court order that directs the Friend of the Court to credit your account for a specific amount.

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

The Michigan Child Support Guideline requires the Friend of the Court to consider both parents' income when making child support recommendations. If either party has had a large increase or decrease in income, they may wish to contact the Friend of the Court to request a review of the support order or file their own petition (see Support Modification section on page 22). If the parties can mutually agree to a change in the support order, and they sign a written agreement (stipulation and consent agreement), that agreement will be entered as an order, if approved by the court.

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

No, all child support payments paid while you are receiving public assistance must be sent by the Friend of the Court to the Michigan Department of Human Services.

However, if the payer is making payments, you are entitled to receive up to the first \$50.00 of any child support paid each month. This money is processed through and paid by the Department of Human Services. If you have questions about this program, contact your local Department of Human Services support specialist.

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

The law does not give the Friend of the Court the right to question how child support payments are spent.

Parenting Time Orders

A parenting time order establishes between a parent and children. The Child Custody Act (MCL 722.27A) states that parenting time shall be granted in accordance with the best interests of the child. If the parents agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record 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. The Friend of the Court has the responsibility to enforce all parenting time orders.

Parenting time Enforcement

The Friend of the Court must begin enforcement proceedings when it receives a written complaint stating specific facts including dates, times and reasons given, about an alleged denial of parenting time, and when the Friend of the Court determines that there is reason to believe the court's order has been violated.

A party has the right to request the Friend of the Court to enforce the parenting time provisions of the court orders. If the Friend of the Court has reason to believe that the parenting time order has been violated, the office may do one or more of the following:

(A) Parties will be referred to Mediation if the case meets all requirements

(B) If a resolution/agreement was reached at Mediation, the Friend of the Court will schedule a joint office appointment to reduce the agreement into a court order.

(C) If no agreement/resolution was reached at Mediation, a hearing will be scheduled in front of the attorney/referee in the Friend of the Court office.

Either party may file a petition with the court to change the existing parenting time order

QUESTIONS AND ANSWERS REGARDING PARENTING TIME

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

This means the parents have the responsibility for setting up a mutually agreed upon schedule for parenting time, which is reasonable under the circumstances.

If you cannot mutually agree to a parenting time schedule, you have the following options:

(A) Contact the other party to see if he/she will agree to mediation,

(B) Contact the Friend of the Court in writing indicating that a mutually agreed upon schedule cannot be determined.

(C) File a petition on your own behalf or contact an attorney to help you file the petition.

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

If you need a temporary change in your parenting time schedule, contact the other parent to discuss making other arrangements.

If you need to make a permanent change,

(A) See if you and the other parent can agree to a change (stipulation and consent agreement).

(B) The Friend of the Court can provide mediation services, if both parties agree to participate.

(C) File a petition with the court for a change in the order on your own behalf or contact an attorney to help you file the petition.

3. *If the visiting parent is not making regular child support payments, do I have to allow parenting time?*

Yes, parenting time and support are separate orders of the court, with separate enforcement procedures (see Support Enforcement section on page 20).

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

File a written complaint with the Friend of the Court office. If the Friend of the Court determines that either parent has violated the parenting time order, they have the responsibility to proceed with enforcement (see Parenting time Enforcement section on page 26).

5. *Clothing is not sent for or returned from parenting time. Is there anything the Friend of the Court can do?*

Unless your court order states each parent's responsibility for clothing, the Friend of the Court does not have any enforcement power.

6. *Do I have to let my children go for parenting time if it appears that the visiting parent has been drinking or using drugs?*

That is your decision. If you make the decision to deny parenting time in these circumstances, you may be asked to explain to the court at a contempt hearing why you felt your decision was in the best interest of the children.

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

Unless your court order forbids such discussions, the Friend of the Court has no enforcement power.

8. *The Friend of the Court has refused to enforce my parenting time order. What can I do?*

The law requires the Friend of the Court to enforce parenting time orders. If they refuse to comply with the law you have a right to file a grievance regarding their procedures (see Complaints about the Domestic Relations Legal System section of page 33).

9. *Does the Friend of the Court have a responsibility to investigate alleged abuse and/or neglect of a child?*

A Friend of the Court does not have any responsibility to investigate child abuse or neglect. Allegations of abuse or neglect should be reported to the Protective Services unit of your local Department of Human Services office.

10. I have a parenting time order and my teenage child does not want to come for parenting time. What can I do?

The parents of the child are bound by the court orders. However, you may consider one or more of the following:

(A) You may want to try to work out a different parenting time arrangement with the child and the other parent.

(B) You can file a petition with the court requesting a change in your parenting time order.

(C) You can request that the Friend of the Court enforce your parenting time order (See Parenting time Enforcement section on page

QUESTIONS REGARDING MISCELLANEOUS ISSUES

Change of Domicile

1. My order states that I cannot move my children from the State of Michigan without approval of the court. How do I get the court's approval?

If the parties mutually agree to a change of domicile and they sign a written agreement (stipulation and consent agreement), it will be entered as an order, if approved by the court. If the parties cannot mutually agree on a change of domicile, they have the following options:

(A) Contact the other party to see if he or she will agree to mediation.

(B) File a petition on your own behalf or contact an attorney to help you file the petition.

Notification to the Friend of the Court or filing a petition does not allow you to move from the state, prior to a court order being entered.

Court Speaks Through its Written Orders

2. Why won't the Friend of the Court enforce what the judge said in court, even if it is not in the written order?

The court speaks through written orders. Therefore, the Friend of the Court enforces only the written orders. If you feel the order does not agree with the transcript, 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 asking the court to correct the written order.

Property Settlement

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

The Friend of the Court enforces custody, parenting time and support order. The Friend of the Court does not have the power-to enforce property settlement orders.

Referees

4. What is a Friend of the Court referee and what can they do?

A referee is a person who takes testimony and reports to the court. A referee can be either a Friend of the Court or an attorney employed by the Friend of the Court.

The chief judge of a circuit court may appoint a referee to hear any domestic relations matter (except an increase or decrease of spousal support/alimony).

A hearing before a referee is not the same as a hearing before a judge. The findings of a referee are only recommendations to the court, and are not final. These recommendations will become an order of the court if neither party files an objection within 21 days

If a party disagrees with a referee's recommendation, he or she has the right to a hearing before the court. This hearing must be requested in writing within 21 days after receiving the referee recommendation (request for a hearing on an income withholding order must be made within 14 days).

Contact the Friend of the Court office for the address to which the written request for a hearing should be sent.

Parent Locator

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

The state and federal government have set up a parent locating service for IV-D cases which can be used to:

- (A) Locate a parent to collect child support.
- (B) Locate a parent for deciding or enforcing a child custody matter;
- (C) Locate a parent in cases of parental kidnapping.

The Friend of the Court, prosecuting attorney and Department of Human Services support specialist can ask to use this service. The full name, date of birth, social security number, and last known address of the parent to be located is required.

Adoptions

6. What happens to my child support order and any support that may be owed when children are adopted?

Adoptions take place in family division of circuit court. The Friend of the Court must be provided copies of all adoption orders. The child support order stops when children are adopted. The Friend of the Court is required to collect all support owed at the time of the adoption. Contact the Friend of the Court to make arrangements to pay all money owed.

COMPLAINTS ABOUT THE DOMESTIC RELATIONS LEGAL SYSTEM

Friend of the Court

1. How do I file a complaint against the Friend of the Court?

The law provides a grievance procedure that a party can use when they have a complaint about Friend of the Court operations or employees. A grievance may not be used to disagree with a decision of a judge or a Friend of the Court recommendation.

(A) You can file a grievance in two ways:

- (1) By filing a grievance form, which you can get at your Friend of the Court office; or
- (2) By stating your concerns in writing to the Friend of the Court in which you clearly identify your letter as a grievance.

(B) The Friend of the Court must investigate and answer your grievance within a reasonable period of time.

(C) If you do not agree with the Friend of the Court answer to your grievance, you can file a further grievance, in writing, with the chief circuit court judge.

(D) The chief circuit court judge must investigate and answer your grievance within a reasonable period of time. The Friend of the Court grievance procedure ends with the response of the chief circuit court judge.

Court Order

2. How do I file a complaint about my court orders?

Court orders are not covered under the Friend of the Court grievance procedure. Contact your attorney to discuss your legal option, such as a motion for re-hearing or filing an appeal with the Michigan Court of Appeals

Judge

3. How do I file a complaint about the conduct of the judge?

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

Judicial Tenure Commission
1410 Comerica Building
211 West Fort Street
Detroit, MI 48226
Telephone: 313-256-9104

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

Attorney

4. How do I file a complaint about my attorney?

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

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

SUPPLEMENT TO DHS-PUB 748

Understanding Child Support, A Handbook for Parents

Is there a cost or fee for child support services?

Beginning September 2008, Michigan will collect a \$25 yearly fee for IV-D child support cases **that meet all of the following requirements:**

- The custodial party has **never** received cash assistance for a child named in the support order.
- The custodial party does **not** currently receive food assistance for a child named in the order.
- The custodial party has received a total of at least \$500 in support payments during each fiscal year (October through September).

Once an order for child support has been established, federal and state laws require that if the case meets all of the above requirements, Michigan will collect the \$25 fee. The fee will be collected from the custodial party's support payment after (s)he has received \$500. A separate \$25 fee will be collected on each case that meets the requirements listed above. Michigan will only collect the \$25 fee on each case once per fiscal year.

DHS-Pub 748-Supplement (7-08)

