

# **MONROE COUNTY Friend of the Court Handbook**

**August 2000**

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**THE FAMILY DIVISION OF THE 38<sup>TH</sup>  
JUDICIAL CIRCUIT**

## **FAMILY COURT JUDGES**

**THE HONORABLE JOSEPH A. COSTELLO JR.  
THE HONORABLE JOHN A. HOHMAN JR.  
THE HONORABLE PAMELA A. MOSKWA  
THE HONORABLE WILLIAM F. LAVOY  
THE HONORABLE MICHAEL W. LABEAU**

**MONROE COUNTY  
FRIEND OF THE COURT  
MARIA ZAGORSKI**

Special thanks to Kathy Kramer, MCFOC Enforcement Aide,  
for her assistance on this project!

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**DIRECTORY:**

**Court House Address:**  
**106 East First Street, Monroe, MI 48161**  
**Friend of the Court MAILING address:**  
**P.O. Box 120, Monroe, MI 48161**

**Phone Numbers:**

**Hon. Joseph A. Costello Jr. (734) 240-7050**

**Hon. Pamela A. Moskwa (734) 240-7335**

**Hon. John A. Hohman Jr. (734) 240-7325**

**Hon. William F. LaVoy (734) 240-7070**

**Hon. Michael W. LaBeau (734) 240-7060**

**Monroe County FOC**  
**24-Hour Voice Response (734) 240-7180**  
**Fax Number (734) 240-7221**

**Special Prosecutor for Domestic Affairs**  
**address:**

**106 East First Street, Monroe, MI 48161**  
**Phone Number: (734) 240-7180**

**Office Hours:**

**Monday-Friday 8:30 AM until 5:00 PM**  
**Cashiering open 8:30 AM until 4:30 PM**  
**Caseworker Phone Hours- M-F 8:30 AM–**  
**5:00PM**

**FOC IS OPEN DURING LUNCH HOUR**  
**EVERY MONDAY THROUGH FRIDAY**

**OTHER NUMBERS:**

**Monroe County Clerk (734) 240-7020**  
**Monroe County Prosecutor (734) 240-7600**  
**Monroe County Sheriff Dept. (734) 243-7070**  
**Monroe County Probate Court (734) 240-7346**  
**Family Independence Agency (734) 243-7200**  
**Child Protective Services (734) 243-7400**

## **MONROE COUNTY FRIEND OF THE COURT HANDBOOK**

This handbook provides useful information about the Monroe County 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 Family Independence Agency (formerly called the Department of Social 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.

### **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 Monroe County Friend of the Court to perform the duties required by Michigan statute and court rule.
- Expect the Monroe County Friend of the Court to explain its policies and procedures.
- Be treated fairly by Monroe County Friend of the Court employees.
- File a grievance with the Monroe County 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 Monroe County Friend of the Court, in writing, of the following information:
  - Current residential and mailing address.

..... • Current employer or source of income's name, address, and telephone number.

- Current telephone number
- Current residence of children.
- Current information regarding health care coverage available as a benefit of employment or maintained by either party.
- Any occupational or driver's license held, and the party's driver's license number.
- Social security number, unless exempt by law from obtaining or disclosing that number.

2. Provide information to the Monroe County 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 all Monroe County Friend of the Court employees with fairness, respect, and courtesy.

**As a citizen using the court, you have a right to:**

- Be treated fairly and courteously.
- Expect court proceedings to begin on time and proceed in an orderly manner.
- Expect unbiased treatment from judges, court employees, and attorneys.
- Object to behavior and comments by judges, court employees, or attorneys that display bias due to race, ethnic or religious affiliation, or sex.
- 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 fairly and courteously.
- Monitor your own behavior, attitudes, and comments to ensure that you do not display bias

due to race, ethnic or religious affiliation, or sex.

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

Michigan law created Friend of the Court offices in 1919. At least one office serves each circuit court's family division. Some circuits comprised of more than one county have a Friend of the Court office for each county in the circuit.

The Monroe County Friend of the Court has 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 (which may include transportation)
  - Amount of child support (including medical support, and in limited situations spousal support)
2. To offer mediation, when both parents agree to participate, as an optional way of settling disagreements over custody or parenting time.
3. To collect, record, and send out all support payments as ordered by the court.
4. To provide enforcement services on custody, parenting time, and support orders.

This handbook also 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 22.

**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) which asks the court to grant an order. A complaint 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. The summons tells 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. A Monroe County Friend of the Court informational handbook must be served with the complaint whenever minor children are involved or spousal support is requested.

### **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 court 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 Monroe County Friend of the Court or private agencies to resolve disagreements over custody and parenting time.

- The Monroe County Family Court Referees may hear the issues and make a Referee Report and Recommended Order that will become an Order of the Court unless a party properly and timely objects and serves a notice of De Novo hearing.
- 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.

Originals of all papers filed in a case must be given to the court clerk and a copy must also be given to the Monroe County Friend of the Court by the person starting the case or by their attorney. The Monroe County 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 is entered.

If a party disagrees with an ex parte order, that party 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. If a party wishes to file an objection, and the Friend of the Court cannot help the parties settle the dispute, the Friend of the Court will provide forms and instructions for filing an objection, and schedule a hearing with the court.

The 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 for an order to the judge. Only a judge can enter orders or judgments. (See Referee section on page 19).

### **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 court, and provide a copy to the Monroe County Friend of the Court. Merely notifying the Monroe County Friend of the Court does not stop the Court Order. Any past due support and fees owed the State of Michigan 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 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 Family Court and the Monroe County Friend of the Court when those agreements are entered as an order of the court. Simply notifying a Monroe County Friend of the Court employee or a Family Independence Agency worker of an agreement does not change the court order.

Sometimes, the Monroe County Friend of the Court has an obligation to ask the court for a change. (See Parenting Time Enforcement section on page 11 and Modification of a Support Order section on page 17).

### **FAMILY SUPPORT ACTIONS**

A parent or guardian 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 Family Independence Agency. The Family Independence Agency makes referrals in both public assistance and non-public assistance cases. 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 Monroe County Friend of the Court must be given a copy. (Simply notifying a Family Independence Agency caseworker or

Monroe County Friend of the Court employee does not end the court's support order.)

When the Monroe County 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 a married party from filing for divorce. However, the family support order will remain in effect until a Judgment of Divorce is granted. If back 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 Family Independence Agency, prosecuting attorneys, and hospitals.

If both parents do not sign an acknowledgment of parentage form, 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. The Family Independence Agency or the child may also file this type of action.

Generally, paternity cases are started by the prosecuting attorney after a referral from the Michigan Family Independence Agency, 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." The pamphlet is available through several sources, including the Michigan Office of Child Support (a part of the Family Independence Agency).

Once paternity has been established, the court may

order custody, child support, repayment of birth and confinement expenses of the mother, and payment of birth and other 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 Monroe County Friend of the Court cannot enforce parenting time issues unless a court order for parenting time has been entered.

If the parties to a paternity action marry each other or wish to discontinue support, they should immediately contact the Monroe County 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.

The child support obligation does not end when either parent leaves the state of Michigan, even if the child lives in a different state from the support payer. Both parents have a duty to keep the Monroe County Friend of the Court advised of their residence and employment. The payer must continue to pay support through the Monroe County Friend of the Court to assure the recipient continues to receive support. The Monroe County 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 a support payer leaves Michigan and 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.

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 Monroe County 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 Monroe County Friend of the Court to send a notice directly to an employer in another State, requiring the employer to deduct child support and send it to the Friend of the Court. 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 Monroe County 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:**

##### **Monroe County Friend of the Court Mediation:**

By law, the Monroe County 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 Monroe County Friend of the Court employee, or the Monroe County Friend of the Court may contract to have a private mediator provide the services. The Monroe County Friend of the Court may also provide informal mediation services.

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. There is typically no cost for Monroe County Friend of the Court mediation.

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

Participation in Monroe County Friend of the Court mediation of custody or parenting time is voluntary; both parties must be willing to participate. If you reach an agreement, the mediator can put it into writing. You may review this agreement with your attorneys. If both parties agree, the 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 formal mediation are confidential. A Monroe County 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 Monroe County 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.

For mediation under the court rule, the parties may agree to have any person mediate. Otherwise, if they do not have an agreed to mediator, the mediator must have obtained family law mediation training and have other qualifications listed in the court rule.

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 no agreement is reached during mediation and the parties have requested evaluative mediation, then the mediator must prepare a report to the parties setting

for the mediator's recommendations on issues. If both parties accept the mediator's recommendation, the parties must take necessary steps to have the recommendation entered as an order.

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 Domestic Relations Mediation is entitled to reasonable fees, which are usually divided equally between the parties.

**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:** The Monroe County 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 Monroe County 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 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.

If the Court determines that a child's best interests are not adequately represented in the proceedings, the court may appoint a lawyer-guardian ad litem to represent the child. The court may require the parties to pay the lawyer-guardian ad litem's fees based on their ability to pay.

## CUSTODY QUESTIONS AND ANSWERS

### □ How do I get an order for custody?

A motion 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 Monroe County Friend of the

Court office 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 Monroe County Friend of the Court office cannot file a motion for you, nor can it provide you with an attorney.

### □ Is there any way the Monroe County Friend of the Court can assist parties in reaching an agreement regarding custody?

The Monroe County 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 7).

□

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

The Monroe County 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 11).

### □ Do I have the right to receive a copy of the Monroe County Friend of the Court report and recommendation on custody?

The Monroe County 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 Monroe County 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 at 202-736-7000, by fax at 202-647-2835, or on the Internet at <http://travel.state.gov>.

**☐ Does the Monroe County 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 Family Independence Agency office.

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

The Monroe County Friend of the Court must begin enforcement when it receives a written statement containing specific facts. This statement must be filed within 7 days of the alleged violation, and should include dates, times, and reasons given about any claimed denial of parenting time.

If the Monroe County 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. Contact your local office for more information.

(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 jail time.

(3) Petition the court for a change in the existing parenting time order. A report and recommendation will be provided in writing to the parties or their attorneys before any court hearing.

### **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 modification. The Monroe County Friend of the Court office 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 interest of the child (ren) and your family situation.

If you cannot agree upon a "reasonable" schedule of parenting time, you have the following options:

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

- Ask the Monroe County Friend of the Court to file a petition with the court to change your order to require a specific schedule.

- 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.

- The Monroe County Friend of the Court will provide mediation, if both parents agree to participate.

- 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 15).

**☐ The other parent is not sending or returning clothing or other personal items for our child. Is there anything the Monroe County Friend of the Court can do?**

The Monroe County Friend of the Court enforces the written order of the court. If your court order does not address clothing and/or other personal items, try to work it out with the other parent or through means such as Monroe County Friend of the Court mediation. If that is unsuccessful, you may file a petition with the court requesting clothing and/or other personal items to be sent for, or returned after, parenting time.

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

File a written complaint with the Monroe County Friend of the Court within seven (7) days of the alleged violation. If the Monroe County Friend of the Court believes the parenting time order has been violated, it shall start enforcement action. (See Parenting Time Enforcement section on page 11).

**☐ 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 Monroe County Friend of the Court do?**

The Monroe County 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 Monroe County Friend of the Court mediation. If that is unsuccessful, you may file a petition with the court requesting additional parenting time through telephone access.

**☐ The Monroe County Friend of the Court will not help enforce my parenting time order. What can I do?**

The law requires the Monroe County Friend of the Court to provide enforcement services regarding parenting time orders. If you believe the Monroe County Friend of the Court is not trying to enforce the order, you may file a grievance regarding their procedures (See Complaints section on page 21). 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 Family Independence Agency. 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 Monroe County 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.

**☐ 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 Monroe County 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 Monroe County Friend of the Court

provide enforcement of the parenting time order (See Parenting Time Enforcement section on page 11).

**□ The other parent refuses to see our children. What can the Monroe County Friend of the Court do?**

The Monroe County 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 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.

### **Support Investigations and Reports**

The Monroe County 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 17).

Otherwise, when directed by the judge, the Monroe County 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. The Monroe County Friend of the Court reports cannot be used as evidence in court without the agreement of both parties. The Monroe County 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 Monroe County 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.

To purchase a copy of the Michigan Child Support Formula Manual, send your request, along with a check or money order for \$5.00 payable to the "State of Michigan" to:

Department of Management and Budget  
Office Services Division  
Publications Section  
P.O. Box 30026  
Lansing, MI 48909

The manual may also be available at your local library or on World Wide Web pages maintained by courts.

### **ACCOUNTING**

Unless otherwise ordered, support is paid through the Monroe County Friend of the Court.

The Monroe County Friend of the Court must forward support to the recipient within 14 days of the date the support is received by the Monroe County Friend of the Court.

Once a year, upon written request, the Monroe

County Friend of the Court will provide parties with a statement of account free of charge.

Payments for support may be made by income withholding, personal check, money order, or in person at the Monroe County Friend of the Court office. At the time of payment, please include your case number.

Some offices may hold out-of-state checks, checks for large amounts, or checks on cases where there has been a history of non-sufficient funds checks, to allow those checks to clear. Do not send cash through the mail.

### **Statutory Service Fees**

Michigan law requires the Monroe County Friend of the Court charge the payer of support a fee on all child support orders to partially offset administrative costs. The current fee is \$39.00 per year.

### **Surcharge on Overdue Support**

Public Act 141 of 1995 requires the Monroe County Friend of the Court to levy an annual surcharge of 8% 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 Monroe County Friend of the Court office will add a surcharge equal to one-half of 8% to all support arrearage amounts. For example, if there is an arrearage of \$1000 on January 1, a surcharge equal to one-half of 8%, or about \$40, would be added to the arrearage amount due. 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**

### **Automatic Support Enforcement**

The Monroe County Friend of the Court is required to begin enforcement action when past due support reaches an amount equal to one month of support. This may be done without waiting for a complaint or request for enforcement.

### **Enforcement of Support**

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

#### **☐ Immediate Income Withholding**

Income withholding directs the payer's employer or other source of income to withhold support and send it to the Friend of the Court.

Support orders entered or changed after December 31, 1990, must include a provision for immediate income withholding.

In some limited cases, an order of income withholding will not take effect immediately, if the court finds that "good cause" exists based upon the following:

- A written specific finding by the court that income withholding would not be in the best interests of the child(ren).
  - Proof of timely payment of previously ordered support, if applicable.
  - An agreement that the payer will keep the Monroe County Friend of the Court informed of his/her name, address and 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, that an alternative payment arrangement has been made, and the payer shall keep the Monroe County Friend of the Court informed of his/her name, address and current source of income and specific information on any health care coverage available to him/her through employment, or that is being maintained.

If a payer lives or moves out of state and gets behind in support payments, the Monroe County Friend of the Court may begin interstate income withholding (See Interstate section on page 6).

#### **☐ Contempt of Court (Show Cause) Hearing**

If support is not paid on time, the Monroe County Friend of the Court or a party may begin a contempt

action (known as a "show cause" hearing), by filing papers requiring the payer to appear in court.

If the court finds the payer in contempt, the court may require a payment toward child support or commit the payer to jail. If it appears to the court that the payer may be confined to jail, the court is required to appoint an attorney for payers who cannot afford private counsel.

If a payer does not appear for a "show cause" hearing, the judge may issue a bench warrant for the payer's arrest, so that (s)he may be brought before the court. Effective January 1, 1997, in most cases the court should order the payer to pay costs associated with the issuance of the bench warrant, including those of the arrest and further proceedings. The Monroe County Friend of the Court employees have no powers of arrest and **cannot** arrest anyone.

Once a bench warrant is issued, the duty to arrest usually lies with local law enforcement agencies. A bench warrant issued for failure to appear for a contempt of court hearing is only valid within the State of Michigan.

#### ☐ **Income Tax Intercept**

If support is overdue, the State of Michigan will 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 Monroe County Friend of the Court and applied to past due support for minor children. If there is any child support due a state, a federal income tax intercept must first be applied to this unpaid amount.

#### ☐ **License Suspension**

For payers with an arrearage of three or more months of support, the Monroe County Friend of the Court may initiate action to have occupational, sporting, or drivers' licenses suspended. A payer can avoid a license suspension by showing that there is a mistake regarding the amount of the arrearage or by entering into an agreement accepted by the court for the payment of the arrearage.

#### ☐ **Felony Prosecution**

**The Michigan Penal Code Act 328 of 1931 750.165 Refusing to support wife or children as required by court order; violation as felony; penalty; exception; suspension of sentence; bond; "state disbursement unit" or "SDU" defined.**

Sec. 165. (1) If the court orders an individual to pay support for the individual's former or current spouse, or for a child of the individual, and the individual does not pay the support in the amount or at the time stated in the order, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both. (2) This section does not apply unless the individual ordered to pay support appeared in, or received notice by personal service of, the action in which the support order was issued. (3) The court may suspend the sentence of an individual convicted under this section if the individual files with the court a bond in the amount and with the sureties the court requires. At a minimum, the bond must be conditioned on the individual's compliance with the support order. If the court suspends a sentence under this subsection and the individual does not comply with the support order or another condition on the bond, the court may order the individual to appear and show cause why the court should not impose the sentence and enforce the bond. After the hearing, the court may enforce the bond or impose the sentence, or both, or may permit the filing of a new bond and again suspend the sentence. The court shall order a support amount enforced under this section to be paid to the clerk or friend of the court or to the state disbursement unit. (4) As used in this section, "state disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

#### ☐ **Liens**

A lien is a claim against real or personal property. Once a person holding property is informed of the lien, that person must not allow the property to be transferred until the lien is released.

As of August 1998, Michigan law provides that a lien in the amount of past due support exists against the support obligor's real and personal property.

#### ☐ **Cash Bonds**

A cash bond is a payment of a specific amount of money to guarantee future support payments will be made. In some cases where there has been a pattern of non-payment and the payer has a large asset, the Monroe County Friend of the Court may be able to obtain a cash bond.

#### ☐ **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 Monroe County Friend of the Court may obtain a settlement requiring payment of the arrearage or initiate proceedings to have the transfer set aside.

#### **MODIFICATION OF A SUPPORT ORDER**

The Monroe County Friend of the Court will review child support orders once every 24 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 Monroe County 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 Monroe County Friend of the Court is not required to investigate more than 1 request received from a party each 24 months.**

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

**If the Monroe County 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 Monroe County 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 \$5.00 per week. If the difference between the current support amount and the proposed support amount is 10% or \$5.00, whichever is less, the Monroe County 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 Monroe County Friend of the Court is not required to petition for a change.

The Monroe County Friend of the Court, or 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 Monroe County Friend of the Court office 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, 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. **Simply notifying the Monroe County 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 Monroe County 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, 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.

**❑ Do the Monroe County Friend of the Court and the judge have to use the child support formula?**

Yes. A different amount may be used if the Friend of the Court 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 11).

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

Contact the Monroe County 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 Monroe County 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 Family Independence Agency.

If you have questions regarding this program, contact your Family Independence Agency support specialist.

**❑ Is the Monroe County 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.

**QUESTIONS REGARDING MISCELLANEOUS ISSUES**

**Change of Domicile**

**❑ 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?**

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 Monroe County 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.

**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 Monroe County 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 Monroe County Friend of the Court**

**enforce the property settlement provisions contained in my Judgment of Divorce.**

The Monroe County Friend of the Court is required to enforce custody, parenting time and support provisions of orders. The Monroe County 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.

A referee can either be the Director of the Friend of the Court or an attorney designated by the family court.

The chief judge of a family 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 recommendation is received (a request for hearing on an income withholding order must be made within 14 days).

Contact the Monroe County 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 Monroe County Friend of the Court Records**

**□ I want to review my Monroe County Friend of the Court file. How can I request this?**

A Monroe County 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 Monroe County Friend of the Court records that are not confidential.

Confidential information is defined by the Michigan Rules of Court. "Confidential Information" means:

- (a) Staff notes from investigations, mediation sessions and settlement conferences;
- (b) Department of Social Services (now Family Independence Agency) protective services reports;
- (c) formal mediation records;
- (d) communications from minors;
- (e) Monroe County 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 Monroe County Friend of the Court charges a \$1.00 per page fee for copying any records.

If the Monroe County 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.

The Monroe County Friend of the Court are not subject to the Freedom of Information Act.

**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.

The Monroe County 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 Monroe County Friend of the Court to make arrangements to pay or collect any money owed.

### **Parent Locator**

#### **☐ What can the Monroe County 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 kidnaping.

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.

### **Citizen Advisory Committees**

#### **☐ What is the Citizen Advisory Committee and what does it do?**

Each county is required to appoint a Citizen Advisory Committee. The committees are required to meet at least 6 times a year, and to advise the county board and chief judge about the duties and performance of the office of the Monroe County Friend of the Court and the community's needs relating to office services.

The committee may review any grievance filed with it which complain about Friend of the Court office operations. For more information on the Citizen Advisory Committee's role in grievances, see the following Complaints section.

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#### **☐ Who serves on my county's Citizen Advisory Committee?**

The county board of commissioners, or where applicable the county executive, appoints public members of the Citizen Advisory Committee. To be appointed, a person must live in the applicable county. The county is to appoint a person from each of the following categories: an advocate for children, a representative of noncustodial parents, a representative of custodial parents, an attorney who engages primarily in family law practice, a mental health professional who provides family counseling, and someone who does not fit into any of the other categories.

In addition to the public members, the county's sheriff, prosecutor, and Family Independence Agency director are to appoint representatives from their offices to serve on the Citizen Advisory Committee.

### **COMPLAINTS**

#### **Friend of the Court**

#### **☐ How do I file a complaint about the Monroe County Friend of the Court?**

The Friend of the Court Act provides a grievance procedure for complaints about Monroe County Friend of the Court operations or employees. **A grievance cannot be used to object to a Monroe County 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 Monroe County Friend of the Court

office; or

(b) Stating your concerns in a letter to the Monroe County Friend of the Court and clearly identifying your letter as a grievance.

Within thirty days, the Monroe County 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 Monroe County Friend of the Court, you may file the same grievance with the chief family court judge.

The chief family 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 Monroe County 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  
1410 Comerica Building  
211 West Fort Street  
Detroit, Michigan 48226  
(313) 256-9104

**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**

The Monroe County Friend of the Court Office cannot make human service organization recommendations or referrals, however, human service organizations are listed in the yellow pages of your local telephone directory.

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**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 Family Independence Agency. 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.

**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)

**Department of Social Services-** Now known as 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).

**DSS-** An abbreviation for the Michigan Department of Social Services. Now known as the Family Independence Agency.

**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.

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

**Fees-** A charged fixed by law for services.

**FIA-** An abbreviation for the Michigan Family Independence Agency.

**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 Dependant 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.

**Investigation by FOC- Obtaining readily available information which the FOC determines will assist it in evaluating support, parenting time, or custody.**

**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 be 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 Family Independence Agency 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.

**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-** Meeting 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 court plan, a probate court judge may be appointed by the chief circuit court judge to act as family court 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 Family Independence Agency.

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

**Reconciliation-** When parties to a 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 his/her 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".

**Visitation Order**- An order that establishes time between the children and the parent with whom they do not primarily reside. Also known as a "parenting time" order.

**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.