

M I C H I G A N

CUSTODY GUIDELINE

FRIEND OF THE COURT BUREAU/STATE COURT ADMINISTRATIVE OFFICE
MICHIGAN SUPREME COURT
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Michigan Custody Guideline

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Introduction

The Custody Guideline contains information addressing many of the issues associated with establishing and modifying custody. It also provides information relevant to the most common custody arrangements. Although the Custody Guideline provides information on numerous subjects, the reader is reminded that the information presented is not a listing of all the subjects and issues relevant to custody.

Child custody is a term that refers to rights and responsibilities for each parent and child. Custody is not a term used to indicate ownership, but rather a determination of the time a child is going to be with each parent and each parent's responsibility to make decisions on behalf of the child. Custody can be modified to accommodate significant changes in the lives of the children or the parents involved. The judge attempts to structure custody to promote a strong relationship between children and their parents. The only time this is not true is when the judge determines that custody with a particular individual would endanger the child's physical, mental, or emotional health.

In custody matters judges are asked to decide who will make decisions for a child and when a child is going to be with each parent. If parents in custody cases have not reached an agreement, the judge is asked to determine when a child is going to be with each parent. However, parents in custody cases who decide to work together can decide the custody agreement with the help of their attorneys, the help of the friend of the court office, and/or the process of mediation. Parents can, on their own, also work through the court system to obtain or modify custody by filing the proper paperwork.

There are several custody arrangements that can be agreed upon by parents or ordered by the judge. However, in custody disputes parents must be advised of joint custody. At the request of a parent the judge must consider awarding joint custody and must state during a hearing the reasons for granting or denying the request. The judge must decide if joint custody is in the best interests of the child. The judge could award joint custody and equally divide the time the child spends with each parent. However, the judge could also award joint custody and not equally divide the time the child spends with each parent. For example, the judge could award joint custody, with one parent having physical custody during the school year and the other parent having physical custody during the summer vacation period.

NOTES TO THE READER: This document (with the exception of the Factors of the Child Custody Act) uses the term, "parent." At times someone other than a parent will be involved in a custody dispute. Many concepts, aspects, and laws apply the same to third persons as they would to parents, but there are also some differences. Information regarding third persons having custody are explained later in this document.

"Judge" will be used throughout this document. Judges make decisions about custody, parenting time, and child support. When judges make decisions, the decisions are written down and signed by the judges. These are called court orders. Many publications use the term court instead of judge. This is done because courts are the institutions that interpret and enforce laws, and judges are the persons who have the responsibility to make court orders. There is also a person called a "domestic relations referee." This person makes recommendations for an order about custody, parenting time, and child support. That recommendation becomes an order of the court when approved by a judge. There are other important differences between a domestic relations referee, friend of the court employees, and judges. Those differences are explained later in this document.

Throughout this document there are references to the laws. When someone is citing a law, that person tells where the law can be found (called a citation). For example, the citation for the Child Custody Act is MCL 722.21. The MCLs are where all the laws for the state of Michigan can be found. The citation for rules about transferring cases is MCR 3.212. MCR stands for Michigan Court Rules. The MCRs are where all the rules for Michigan courts can be found. In this document the Michigan Court Rules will be referred to as MCR.

Definitions of Custody

Judges can order different custody arrangements. Parents can agree to a custody arrangement and judges will usually sign the court order for the arrangements as long as they believe the agreement is in the best interests of the child. The following are descriptions of various custody arrangements.

SOLE CUSTODY: There is no legal definition for sole custody. For the purpose of the Michigan Custody Guideline, sole custody occurs when primary physical custody and legal custody are given to one parent. Physical custody is when a parent provides most of the day to day care for the child. Legal custody is when a parent has the responsibility of making all major decisions regarding the child's upbringing (such as medical treatment, school enrollment, religious instruction, and participation in extracurricular activities). If the judge believes the parents cannot work together for the benefit of their child, sole custody is usually awarded to one parent. The other parent may be given parenting time, as determined by the court. If parenting time is ordered, the non-custodial parent is responsible for making routine and emergency decisions for the child during parenting time.¹

JOINT CUSTODY: At the request of either parent, the court must consider ordering joint custody. If the parents agree on joint custody, the court must order it unless the court determines that joint custody is not in the best interests of the child. When deciding, judges must state on the record their reasons for granting or denying the request. Judges may consider joint custody without a parent's request. In addition to the normal factors considered when deciding custody, with joint custody judges must also consider whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.² The statute defines joint custody in a way which provides for joint legal custody, joint physical custody, or a combination of joint legal and joint physical custody.

THE FOLLOWING ARE 2 TYPES OF JOINT CUSTODY:

JOINT LEGAL CUSTODY: Joint legal custody means that parents share decision-making authority as to the important decisions affecting the welfare of the child.³ Joint custody does not depend on the amount of time the child is with each parent.

¹ In particular, the Child Custody Act, MCL 722.27a(9) gives a parent exercising parenting time the right and duty to decide all routine matters concerning the child. Joint custody is defined in the Child Custody Act, MCL 722.26a(7). All custody is slightly impacted by provisions on parenting time (Child Custody Act, MCL 722.27a). There have been major court decisions that have impacted what major decisions are and the difference between joint legal and physical custody *Lombardo v. Lombardo*, 202 Mich App 151, 507 NW2d 788 (1993), *Fisher v. Fisher*, 118 Mich App 227, 324 NW2d 582 (1982), *Nielsen v. Nielsen*, 163 Mich App 430, 415 NW2d 6 (1987), *Arndt v. Kasem*, 156 Mich App 706, 402 NW2d 77 (1986) *Wellman v. Wellman*, 203 Mich App 277, 512 NW2d 68 (1994), and *Duperon v. Duperon*, 175 Mich App 77, 437 NW2d 318 (1989).

² Child Custody Act, MCL 722.26a(1)(b)

³ Child Custody Act, MCL 722.26a(7)(b)

JOINT PHYSICAL CUSTODY: Means that there will be specific times when each parent will have the child with them.⁴ However, it does not mean the parents will necessarily share decision-making authority unless the judge also has ordered joint legal custody. As an example of joint physical custody, one parent could have physical custody during the school year, alternate weekends, and alternate holidays, with the other parent having physical custody during the summer months, alternate weekends, and alternate holidays. If the judge awards joint physical custody, the court order will usually include a statement regarding when the child shall reside with each parent. The court order may provide that physical custody be shared by the parents to make sure the child has contact with both parents. During the time a child resides with a parent, that parent decides all routine and emergency matters concerning the child.

⁴ Child Custody Act, MCL 722.26a(7)(a)

Factors in the Child Custody Act

Parents are encouraged to reach their own agreements regarding custody arrangements. When parents cannot agree, the judge must decide custody by considering all of the following best interests factors of the Michigan Child Custody Act.⁵ These factors are usually addressed during custody evaluations by the friend of the court. The following are the factors of the Child Custody Act:

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

⁵ Child Custody Act, MCL 722.23

Established Custodial Environment

Before ruling on custody, the judge must determine whether an established custodial environment exists. “The law states, The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.”⁶

If the judge determines that a custodial environment has been established, judges can only change custody if it is clear and convincing that there has been significant change in circumstances and that the custody change is in the best interests of the child.⁷ It does not have to be clear and convincing to the judge to change custody if no established custodial environment existed. It is important to note that just because a child is living with a parent, that does not necessarily mean that an established custodial environment exists. A parent may have custody, but that does not mean the child looks to only that parent to provide guidance, discipline, the necessities of life, and parental comfort. It should also be noted that both parents may have established custodial environments with the child because they have provided guidance, discipline, the necessities of life, and parental comfort for the child.

⁶ Child Custody Act, MCL 722.27(1)(c)

⁷ Child Custody Act, MCL 722.27(1)(c)

Children Deciding Where They Want to Live

Factor (i) of the Child Custody Act, states, “the reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.”⁸ The mere expression of a child’s preference is only one consideration. The judge must determine if the child is of an age and maturity to indicate “reasonable preference.” “Reasonable” is not always easy to determine. Some of the aspects the judge may consider when deciding reasonable are:

AGE OF THE CHILD: As children grow older, they generally have a greater understanding of the circumstances surrounding the court proceedings. Judges will allow children to express a preference. However, children cannot legally choose where to live until they have reached the age of 18 or are determined to be emancipated.

CONSISTENCY OVER TIME: Judges will look to see if the children have had a history of expressing a reasonable preference. Judges would consider whether the child’s preference was based on the fact the child just recently spent an extended period of time with either the mother or father.

Does the child understand the choice that he or she is making.

⁸ Child Custody Act, MCL 722.23

The Role of the Judge in Custody Hearings

Judges decide custody matters, not the friend of the court. The friends of the court and domestic relations referees can only make recommendations for orders to judges. The law provides that the best interests of the child must control the judge's decision in custody disputes.⁹ When judges hold custody hearings they review the sum total of evidence presented about the factors of the Child Custody Act to determine the best interests of the child.¹⁰ For judges to make decisions about custody, there must be a hearing unless the parents agree and want the court to sign the agreement (referred to as a stipulation or consent order). Judges will normally sign a stipulation or consent order if they believe independently it is in the best interests of the child. Judges, based on their own findings, must adopt, approve and sign the stipulation or consent order before it becomes an order of the court.

Before the hearing, the judge may read the custody evaluation report that was completed by the friend of the court. Judges usually read these reports to get a better understanding of the family's situation.

During the custody hearing, the judge may listen to witnesses (teachers, friends of the family, counselors, etc.). The judge may also look at other evidence (school, community records, counseling reports, etc.).

During many custody hearings, judges speak to the children. Many judges speak to children in their chambers (judge's office). When judges decide to speak to children in their chambers, sometimes the parents' attorneys are there and sometimes they are not. A friend of the court custody evaluator may also be present when the judge speaks to the child. Judges will decide who will be present when they interview children. Judges are required to make a record of the interview with children. Judges do not have to tell the parents or their attorneys what the child's preference was, only that it was considered. The child's preference does not outweigh all of the other factors of the Child Custody Act. It is only one consideration that is looked at by judges.

If parents disagree with the judge's decisions, they may appeal the decisions. An appeal is a formal request to a higher court asking to have the judge's decision be changed. Appeals in domestic relations cases go to the Michigan Court of Appeals.¹¹ Parents may ask the judge to review a recent custody decision without appealing the case to a higher court.¹²

⁹ Child Custody Act, MCL 722.25

¹⁰ Child Custody Act, MCL 722.23

¹¹ MCR, Chapter 7

¹² MCR 2.611, MCR 2.612 and MCR 2.119(F)

Friend of the Court Custody Evaluation

The friend of the court office is the first public agency that most parents will speak to when the judge is trying to decide custody. One of the responsibilities of the friend of the court is to complete a custody evaluation. The law requires the friend of the court to investigate all relevant facts and make a written report and recommendation to the parents and the court regarding child custody when there is a dispute as to child custody or parenting time, or both, and domestic relations mediation is refused by either parent or is unsuccessful, or if ordered to do so by the court.¹³ The law also states, "If requested by a party, an investigation shall include a meeting with the party."¹⁴

When completing an evaluation for custody, the evaluator may meet with the parents together or separately. Each friend of the court office has its own policy on scheduling custody evaluation interviews. Some offices schedule separate meetings for each parent while others schedule joint meetings for both parents to attend. There are times when a joint meeting is not appropriate. If there has been a history of domestic violence, the evaluator may speak to the parents separately. The evaluator may also speak separately to the parents simply because both could not appear for the scheduled meeting. Interviews with parents are intended to provide the evaluator with an opportunity to gather information.

The interview with the evaluator is, understandably, a stressful and anxious time for parents. Parents are usually quite uneasy about having their parenting skills evaluated. Often parents are concerned that they may "lose their children" as a result of the evaluation, and this may heighten their anxiety. Parents should always remember they are involved with a custody evaluation to determine the best interests of their child and it is not an opportunity to inflict pain and suffering on the other parent or their child. The evaluation is intended to assist the parents, the attorneys, and the judge in deciding when each parent will have time with the child. Parents should also remember that the friend of the court only makes recommendations. The judge determines the custody, parenting time, and child support arrangements.

During the meeting, the evaluator will usually discuss each factor of the Child Custody Act (unless some factors are not contested by the parents). An example of a question an evaluator may ask is "How do you show love and affection for the child?" A follow-up question could be: "How does the other parent show love and affection for the child?" It is common for the evaluator to address each factor of the Child Custody Act by presenting similar questions. The evaluator may also ask other questions that attempt to gather additional information. For example, "Could you please describe the relationship your child has with the other parent?" The custody evaluator uses the factors of the Child Custody Act to gather information in order to reach an overall conclusion and recommendation that is provided to the judge.

¹³ Friend of the Court Act, MCL 552.505(1)(d)

¹⁴ Friend of the Court Act, MCL 552.505(1)(d)

The evaluator may ask for the “home record” of your child. If this occurs, the evaluator is seeking information regarding interaction with siblings, health and emotional problems, discipline problems, and whether the child is outgoing or withdrawn.

The evaluator may also ask for the “school record of the child.” This record may indicate academic progress, disciplinary action, learning disabilities, and referrals to the school counselor.

The evaluator may also ask for the “community record of the child.” This record may indicate community activities the child has been involved with.

Parents may be asked to sign a release form or forms so that the evaluator can ask the school, or other agencies, for information regarding the child.

The custody evaluator will usually schedule an interview with the child if the child is of an age and maturity level to be interviewed. Children are not asked to choose one parent over the other during the interview.

“The evaluator is trying to gather information about: How the child is functioning physically, emotionally, and mentally. What is the relationship between the child and each parent? How does the child feel about the issue of custody? Usually custody evaluators will start the interview by discussing less stressful topics such as school, activities, toys, and chores. The custody evaluator may then ask questions concerning the child’s relationships and feelings. Most evaluators usually end the interview by asking the child if he or she has any questions and telling the child that it is the judge who makes the custody decision.”¹⁵

Many evaluators will indicate in their report that the child’s preference was considered but not indicate what the preference was. This is done to protect the child’s relationship with each parent.

Home inspections are sometimes part of the friend of the court evaluation. It may not be necessary for the custody evaluator to conduct a home inspection for every case. If either parent does not contest the other parent’s living conditions, it may not be necessary for the evaluator to conduct a home inspection. Home inspections may be announced or unannounced. Each parent should ask the custody evaluator about a home inspection and if the inspection will be announced or unannounced.

Friend of the court custody evaluations may vary in format. The following are examples of information that could be included in a friend of the court custody report.

- Case Identification.
- Names, addresses, and ages of parents and minor children.
- List of investigative and professional contacts and attachments.
- Legal history.
- Family and marital (or relationship) history.
- Statement of positions of parents (this is what the parents think the custody arrangement should be).
- Information (this may include a summary of the information, followed by a statement of relative advantages of the parents as measured by the factors of the Child Custody Act or a statement of factors from the Child Custody Act with the information relevant to each factor assembled under the appropriate factor, together with a statement of advantage for each factor).
- Summary, conclusions, and statement as to established custodial environment.
- Recommendations for custody, parenting time, and child support.
- Response of parents to the custody evaluation.
- Date submitted and signature of custody evaluator.

If a custody evaluation is completed by a community resource (a community resource may be a counseling center, a psychologist or social service agency) judges must ensure that copies of the written findings and recommendations are provided to the friend of the court and to the attorneys for the parents, or to the parents if they are not represented by an attorney. The attorneys, or the parents themselves if they are not represented, may object to the report with the judge before a decision about custody is made.¹⁶

¹⁵ Guidelines for Interviewing Children About Custody, by the Honorable Bruce A. Newman, 7th Circuit Court, Family Division.

¹⁶ MCR 3.219, Dissemination of a Professional Report

The Difference Between a Domestic Relations Referee and a Judge

The chief circuit court judge may appoint a domestic relations referee to hear any motion in a domestic relations matter (with the exception of a change in spouse support).¹⁷ Custody is a domestic relations matter.

A person must have certain qualifications to be a referee. Since May 1993, the chief circuit court judge may only appoint attorneys to be domestic relations referees. Friends of the court who were appointed as referees prior to May 1993 may continue to be referees.

A referee hearing is similar to a court hearing. The domestic relations referee serves the same role during the referee hearing as a judge would during a court hearing. The domestic relations referee can listen to testimony, review evidence, and then make a recommendation for an order. The referees must submit the recommended order to the judge and the parents (or a parent's attorney). If a parent disagrees with the recommended order, the parent may file a written objection and notice of hearing with the county clerk within 21 days from the time the recommendation is served to the parents.¹⁸ If the referee's recommendation is for an income withholding (a child support deduction from someone's source of income – usually a person's paycheck), then the objection must be filed within 14 days. The friend of the court should provide information on how to object to a referee recommendation.

If a parent disagrees with a judge's decision, they may appeal that decision to the Michigan Court Appeals.¹⁹ The parent can also file a motion for the judge to reconsider the decision.²⁰

¹⁷ Friend of the Court Act, MCL 552.507(2)

¹⁸ If a party is represented by an attorney, the recommendation must be served on the attorney instead of the party. MCR 2.107(B)(1). In most cases, the date of service is the date that the recommendation is mailed. See MCR 2.107(C)(3).

¹⁹ MCR Chapter 7

²⁰ MCRs 2.611, 2.612, and 2.119(F)

Mediation

Mediation provides parents with the opportunity to communicate, cooperate, and, with the assistance of a neutral third party, resolve any disputes regarding custody or parenting time. There is typically no cost when the friend of the court provides mediation. Participation in friend of the court domestic relations mediation of custody or parenting time is voluntary; both parents must be willing to participate.

There are basically four types of mediation: court rule domestic relations mediation, court rule domestic relations evaluative mediation, formal friend of the court mediation, and alternative dispute resolution.

COURT RULE DOMESTIC RELATIONS MEDIATION: The judge may refer family matters to mediation under the Michigan Court Rules.²¹ This may occur when the parents agree to mediation, upon written request to the judge by one of the parents, or upon the direction of the judge. For mediation under the court rule, the parents may agree to have any person mediate. If they do not agree to a mediator, the court will assign a mediator. Parents must attend the mediation sessions and may be accompanied by their attorneys. Any information shared with the mediator is considered confidential and the mediator may not disclose this information during any future proceedings or at a hearing.

If an agreement is reached during this form of mediation, that agreement must be put in writing and signed by the parents and their attorneys. The parents must take necessary steps to have the mediation agreement entered as an order of the court (this is called a consent order or a stipulation).

COURT RULE DOMESTIC RELATIONS EVALUATIVE MEDIATION: If an agreement is not reached during mediation and the parents have requested evaluative mediation (a special type of mediation), then the mediator must prepare a report for the parents setting forth the mediator's recommendations on the issues. If both parents accept the mediator's recommendation, the parents must take necessary steps to have the recommendation entered as a court order. If either parent rejects the mediator's recommendation, even a small portion, the matter will have to be settled by the judge. During the hearing the judge may not consider mediator's recommendation.²²

An individual who performs Court Rule Domestic Relations Mediation or Evaluative Mediation is entitled to reasonable fees, which are usually divided equally between the parents.

²¹ MCR 3.216, Domestic Relations Mediation

²² MCR 3.216, Domestic Relations Mediation

FORMAL FRIEND OF THE COURT MEDIATION: The friend of the court is required to provide, either directly or by contract, mediation to assist parents in voluntarily settling a dispute concerning child custody or parenting time.²³ This means that a friend of the court employee or a person designated by the friend of the court must assist parents in resolving a custody or parenting time dispute. Specific procedures must be followed during formal mediation. There are also specific qualifications a person must have to conduct formal mediation. Statements made during formal mediation are confidential and cannot be used later during a court hearing. If an agreement is reached during mediation and the mediator is qualified, a stipulation or consent order can be prepared that reflects the agreement of the parents.²⁴ A friend of the court employee cannot perform formal mediation and also cannot investigate or enforce on the case.²⁵ Nor can an employee who has performed formal mediation be a domestic relations referee on the case.

ALTERNATIVE DISPUTE RESOLUTION: This is a process where two parents agree to meet with a third party to discuss their differences. There are no required legal procedures involved with informal mediation. An example of informal mediation would be where parents agree to meet to discuss parenting time/custody problems with their assigned caseworker. Information shared during this meeting would not be considered confidential and could be shared with the judge at a later date.

²³ Friend of the Court Act, MCL 552.513(1)

²⁴ Friend of the Court Act, MCL 552.513(2)

²⁵ Friend of the Court Act, MCL 552.515

Child Custody Modifications

REPRESENTING YOURSELF IN A CUSTODY MATTER: Increasingly, parents are choosing to represent themselves in custody actions. If a parent believes the current court order for custody should be changed and does not want to hire an attorney, that parent may request from the friend of the court office a “Pro-Per” Motion (sometimes referred to as a “Pro-Se” Motion). This is a “do-it-yourself” form that allows parents to file a motion (a formal request) for a change in custody. The friend of the court is required to make available these Pro-Per Motions. It also must make available forms for responding to a motion for such a modification without the assistance of legal counsel.²⁶

Court staff cannot represent either parent, give legal advice, or assist an individual in deciding what statements should be made to complete the Pro-Per Motion forms. The friend of the court should be able to tell individuals who to contact to get a court hearing. The court clerk can provide information about court schedules, fees, location of hearings, and charges for copying documents. All counties charge a fee to file a motion including a “Pro-Per.” The court clerk can provide the amount of the fee.²⁷ If a parent is unable to pay the fee, the parent should ask the county clerk for an MC20 Form (Affidavit and Order Suspension of Fees/Costs), which allows the court to waive the fee. After the motion is filed, parents can hire an attorney, or can decide to represent themselves. When parents decide to represent themselves, they will be held to the same standards as any attorney who practices law. For example, the person will have to serve the other parent with the motion and notice of hearing (this means they must make sure the other parent receives the motion and notice of hearing). Judges or domestic relations referees cannot assist parents who decide to represent themselves in court.

Parents who decide to use the “Pro-Per” Motion will be responsible for preparing the court order unless the judge orders otherwise. Therefore, parents who file the motions should listen very carefully and take notes to make sure they understand exactly what the judge has ordered. Parents who prepare the order will have to have the judge sign the order then file the original with the county clerk and send copies to the other parent and to the friend of the court. If a domestic relations referee hears the case, the referee may prepare the order.

²⁶ Friend of the Court Act, MCL 552.517a

²⁷ Revised Judicature Act of 1961, MCL 600.2529(1)(e)

CONTACTING AN ATTORNEY: Parents who want to change the custody in a court order may contact an attorney. Attorneys can file motions for changes in custody on behalf of their clients.

WHEN PARENTS AGREE TO CHANGE CUSTODY

A STIPULATION OR CONSENT ORDER CAN BE PREPARED: Some friend of the court offices will prepare a legal agreement (called a stipulation or consent order) for a change in custody. The agreement can be a result of mediation or a written agreement that is signed by both parents and submitted to the friend of the court office. Parents should check with their friend of the court office regarding office policy for preparing stipulations and consent orders.

Third Person Custody

According to the law a third party means any individual other than a parent.²⁸ A guardian or limited guardian of a child has standing to bring an action for custody.²⁹ A limited guardian of a child does not have the right to ask for custody if the parent or parents of the child have done what the judge ordered (substantially complied) during the guardianship placement plan.³⁰ For additional information regarding guardianships, the circuit court and the probate court, please refer to the Child Custody Act, MCL 722.26b and Estates and Protected Individual Code (EPIC) MCL 700.5201 through MCL 700.5219. Based on the Child Custody Act, MCLs 722.26c(1)(a) and 722.26c(1)(b), in addition to a guardian, a third person may bring an action for custody of a child if the judge finds either of the following:

BOTH OF THE FOLLOWING:

- The child was placed for adoption with the third person under the adoption laws of this state or another state, and the placement order was still in effect at the time the action was filed. This means there was a court order placing a child with a third party, and before the court order expired the third party who had temporary custody filed a motion (a formal request with the court) for permanent custody.
- After the placement, the child resided with the third person for a minimum of 6 months.

ALL OF THE FOLLOWING:

- The biological parents were never married to one another.
- The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.
- The third person is related to the child within the fifth degree by marriage, blood or adoption.

There is certain information that must be presented to the court by a third person or an attorney representing the third person when seeking custody of a child. A person should review the Child Custody Act, or ask an attorney about this information.³¹

²⁸ Child Custody Act, MCL 722.22(g)

²⁹ Child Custody Act, MCL 722.26b(1)

³⁰ Child Custody Act, MCL 722.26b(2)

³¹ Child Custody Act, MCL 722.26c(2)

When a person wants custody of a child to whom that person is not a parent a motion (a formal request) or a complaint must be filed with the court. Most of the custody evaluation procedures used by the friend of the court are the same, except the interview will involve the third party, the parents, and the child. If there is a hearing, a judge must presume that the best interests of the child are served by awarding custody to the parents, unless the contrary is established by clear and convincing evidence. This means it must be clear and convincing to the judge that awarding custody to someone other than the biological or adoptive parent would be in the child's best interests. When a judge awards custody to a third person, one or both of the parents may receive parenting time and be ordered to pay child support.

Changing the Child's Residence

With two exceptions, a parent may move a child to another location. The first is that each court order granting custody must provide that a parent who has custody of a child may not change the child's permanent residence from the state of Michigan until the judge approves of the move. The second is that each court order granting custody or parenting time must provide that parents who have custody or parenting time may not move more than 100 miles from their current residence without the approval of the judge.

A parent does not have to request that a judge approve a proposed move to another place in Michigan if:

- The other parent agrees to the move.
- The judge ordered sole custody to one of the child's parents.
- The parents were already living 100 miles apart when the judge decided custody.
- The move results in the child's 2 legal residences being closer to each other than before the move.

However, if the custodial parent wants to move the child to another state, even if it is closer than 100 miles from the other parent's residence, the judge must approve the move.

A parent can get the judge to approve the move in one of two ways. The parent can ask the other parent to agree to the move or the parent can ask the judge to enter an order approving the move. If the parents agree, the friend of the court or an attorney can prepare an order containing their agreement. The order should state:

- The address where the child will reside.
- Any changes in parenting time or transportation made necessary by the move.

If the parents don't agree, the parent must file a formal request, called a motion, asking the judge to approve the move. The motion should say why the judge should approve the move. Usually these reasons are related to finding a job for the parent or the parent's spouse, being closer to family members, or classes. The judge may ask the friend of the court to evaluate the request and make a recommendation. The judge may hold a hearing where both parents can tell the judge what they think the judge should do. The judge must decide the following:

- Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent. This means that the judge must have enough information to show that the move will improve both the child's and the parent's life.

- The degree to which each parent has complied with, and utilized court order parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule. This means judges must decide if each parent has followed the court order regarding custody and parenting time and how each has used that time with the child. A judge must also determine if the parent is asking to move just to reduce the child's opportunity to spend time with the other parent.
- The degree to which the judge is satisfied that, if permitting the legal residence change, if it is possible to order a modification of the parenting time schedule and other arrangements governing the child's relationship between the child and each parent, and whether each parent is likely to comply with the modification. The judge must decide if each parent will still have the opportunity to have a good relationship with the child and if each parent will do what the judge orders.
- The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation. The judge must be convinced that the parent opposing the move is not doing so as a means to negotiate paying less child support.

When parents who have custody or parenting time ask a judge to approve a move of 100 miles or more from the parent's residence the judge must also consider the following:

- Domestic violence, regardless of whether the violence was directed against or witnessed by the child. The judge must determine if the child has been a victim of domestic violence or witnessed domestic violence, and whether that domestic violence should be a factor in approving the move or changing parenting time. If a parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the parent may move to such a location with the child until the court makes a determination.

Pamphlets and Handbooks Available to the Public

The State Court Administrative Office, Friend of the Court Bureau will be providing the following brochures on-line at:

<http://www.courts.michigan.gov/scao/resources/publications/pamphlets/index.htm>.

PAMPHLETS

| FRIEND OF THE COURT AND DOMESTIC RELATIONS MATTERS | PAMPHLET NUMBER |
|---|--------------------|
| An Employer's Guide to Income Withholding | PSA 12 |
| Tax Refund Offset Program | PSA 13 |
| It's Important to Know Your Rights... Concerning Support Review and Modification | PSA 21 |
| Information about Using Liens to Obtain Past Due Support | PSA 23 |
| Facts About the Michigan Child Support Formula | PSA 24 |
| Show Cause Proceedings In Domestic Relations Cases | PSA 25 |
| What It Means To Represent Yourself In A Domestic Relations Matter | PSA 26 |
| Friend of the Court Citizen Advisory Committee | PSA 28 |
| The Uniform Interstate Family Support Act (UIFSA) | PSA 29 |
| Understanding Child Support Payment Distribution | PSA 30 |

HANDBOOKS

The Friend of the Court Model Handbook and the Parenting Time Guidelines can be found at:
<http://www.courts.michigan.gov/scao/resources/publications/manuals/index.htm#refmnl>

Laws Associated with Domestic Relations Litigation

THE FOLLOWING LIST OF LAWS ARE AVAILABLE AT:

<http://www.courts.michigan.gov/scao/services/focb/focb.legis.htm>. These laws are associated with domestic relations litigation pertaining to child support, parenting time, and custody.

Age of Majority Act; MCL 722.51 - 722.55

Child Custody Act; MCL 722.21 - 722.31

Child Protection Act; MCL 722.621 - 722.638

Circuit Court Family Counseling Services Act; MCL 551.331 - 551.344

Family Support Act; MCL 552.451 - 552.459

Friend of the Court Act; MCL 552.501 - 552.535

Michigan Penal Code; Kidnaping; MCL 750.350A

Office of Child Support Act; MCL 400.231 - MCL 400.239

Paternity Act; MCL 722.711 - 722.729a

Revised Judicature Act; Fees; MCL 600.701, 600.705, 600.711, 600.715, 600.725, 600.2528, 600.2529, 600.2530, 600.2538

Status and Emancipation of Minors - Rights of Parents; MCL 722.1 - 722.6

Support and Parenting Time Enforcement Act; MCL 552.601 - 552.650

Uniform Child Custody Jurisdiction Act; MCL 600.651 - 600.673

Uniform Interstate Family Support Act; MCL 552.1101 - 552.1803

Divorce Generally; MCL 552.1 et seq.

Definitions

ATTORNEY

A lawyer; a person admitted to legal practice who is qualified to represent the legal interests of another person and speaks for that person.

CASE NUMBER

The case number is the number assigned to a case. This number is the same for the friend of the court case and the court case. The case number usually includes the year the case started. The case number remains the same until the case is closed.

CHIEF JUDGE

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

Child abuse/neglect is the mistreatment (physical, mental, or emotional abuse) of a minor by an adult. Reports of suspected child abuse should be reported to the county Family Independence Agency, Office of Children Protective Services, in the county where the suspected abuse occurred.

CHILD CUSTODY ACT

This law states how custody of a child is to be determined and includes the 12 factors the judge uses to decide custody and parenting time. The same 12 factors are usually addressed by the friend of the court when completing a custody evaluation and report.

CHILD SUPPORT

Child support is the payment of money for the support of a child in a Divorce, Paternity, or Family Support Act proceeding. Support includes but is not limited to health care, child care, and educational expenses.

Definitions

CIRCUIT COURT

The circuit court is the trial court in Michigan which hears many types of cases. Custody, parenting time, and child support are heard by a judge in the family division of this court.

COMPLAINT

A complaint is a document filed with the court in a original court action that ask for one form of relief

CUSTODY

Custody is the care and keeping of anything or anyone, for example a child in a custody case. Child custody is a term that refers to rights and responsibilities for each parent and child. Custody is not a term used to indicate ownership, but rather a determination of the time a child is going to be with each parent and each parent's responsibility to make decisions on behalf of the child.

CUSTODY EVALUATION

A custody evaluation is the process of gathering information that is considered and reviewed then submitted in a written report that includes a recommendation for custody and parenting time. The recommendation goes to a domestic relations referee or judge hearing a custody dispute to help determine the "best interests of the minor children as defined in the Child Custody Act, MCL 722.23.

CUSTODY EVALUATOR

A custody evaluator is the person that gathers information and evaluates factors then provides custody recommendations to the domestic relations referees and judges.

DOMESTIC RELATIONS REFEREE

A domestic relations referee is a lawyer the court appoints to have a hearing and recommend an order. A hearing before a judge is final. A hearing before a referee is final only if the parents do not object to the recommended order. If a parent objects to a referee's recommended order that parent may have a new hearing before a judge.

DOMESTIC RELATIONS REFEREE'S RECOMMENDATION

The domestic relations referee must submit a recommendation for an order to the judge, to the attorneys, or to the parents if they are not represented. A written objection and notice of hearing must be filed with the court within 21 days from the time the recommendation is served (when a document is sent by mail or given to a person) on the attorneys, or parents if they are not represented. If the referee's recommendation is for an income withholding (a child support deduction from someone's source of income usually a person's paycheck), then the objections must be filed within 14 days.

Definitions

DIVORCE

A divorce is the legal termination of a marriage.

DOMICILE

Domicile is the permanent home to which a person, when absent, always intends to return. The word domicile is usually used when a parent wants to move to another state with their child; this is called a change of domicile.

FAMILY DIVISION OF THE CIRCUIT COURT

Family Division of the Circuit Court is responsible for hearing cases about families and their children. The family division hears custody, parenting time, and child support cases, as well as juvenile cases that were formerly heard by the probate court.

FRIEND OF THE COURT OFFICE

The friend of the court is the office that investigates and makes recommendations to judges and domestic relations referees in matters related to minor children (custody, parenting time, and child support) and enforces court orders for the judge.

MEDIATION

Mediation is a voluntary process where parents can try to reach their own agreement without going to court. The friend of the court provides mediation services at the request of either parent. If an agreement is reached through mediation, a consent order or stipulation can be entered by the court.

MICHIGAN COURT RULES

Michigan Court Rules are procedures established by the Supreme Court for judges, domestic relations referees, and friends of the court to abide by.

MOTION

A motion is a formal request made in writing to the court. A motion is sometimes called a petition.

ORDER

An order is a decision of the court made in writing.

ORIENTATION PROGRAM

Orientation program is a program for parents to become familiar with the friend of the court operations.

Definitions

PARENTING TIME

Parenting time is time set aside by court order for a parent and child to spend together in the absence of a contrary agreement by the parties. Michigan law recognizes that it is in the best interests of the child that parenting time occur in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent. To this end, parenting time should be on a regular schedule with specific consistent starting and ending times for the ease of the parties and child in planning their schedules.

PRO-PER MOTIONS (DISTRIBUTED BY THE FRIEND OF THE COURT)

A Pro-Per Motion is a formal written request to the judge to modify an order by someone who is not represented by an attorney. The motion must be filed with the court and served on the other parent.

TEMPORARY ORDER

A temporary order: Before a final order is signed by judges they may sign a document that determines temporary custody, parenting time, and child support.

TESTIMONY

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

WITNESS

A witness is a person who testifies to what that person knows, seen, heard, or otherwise observed.

Frequently Asked Custody Questions

How old does a child or children have to be before they can decide where to live?

When children reach the age of 18 years (or are determined to be emancipated by a judge), they can decide where to live. However, before age 18, Factor (i) of the Child Custody Act requires the court to consider, "The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." Judges usually place more emphasis on the preference of the child if the child demonstrates a greater level of maturity and understanding.

Do I have to get the court's permission to move more than 100 miles from my current home if I only have parenting time with my child?

Yes, unless the other parent agrees, both parents were already living 100 miles apart when the judge signed your court order, sole custody was granted to the other parent, or the move results in the child's 2 legal residences being closer to each other than before the move.

What do I do if I disagree with the Domestic Relations Referee's recommendation for an order?

If you have a referee hearing, and you disagree with the recommendation for an order made by the domestic relations referee, you need to file an objection (a written disagreement filed with the court) and schedule a hearing before the judge assigned to your case within 21 days from the date the referee's recommended order is handed or mailed to you. For more information regarding the procedures for hearings before domestic relations referees, please refer to MCR 3.215.

What do I do if I disagree with what the judge orders?

Any decision made by a family division judge may be appealed to the Michigan Court of Appeals (MCR Chapter 7). A parent may also ask for a review of a recent judge's decision. For more information about how to ask a court to reconsider a matter, please refer to MCR 2.611, 2.612, and 2.119(F).

Can I simply call the friend of the court and tell the office that my child is now living with me if my ex-spouse and I agree?

No, a call to the friend of the court office notifying a staff person of the change does not produce a court order. A phone call or a letter will not stop a child support order, even if the child is now living with the parent paying child support. You will need a modification to your court order. If you and the other parent have informally agreed to a change in custody, and you wish to change the custody order, you should contact the friend of the court and ask about the procedures that have to be taken to modify the court order. The friend of the court may request that you and the other parent submit a written statement, stating the exact agreement that you have reached concerning custody, parenting time, and child support. After the friend of the court receives the written statement signed by both parents, a formal stipulation may be prepared by the friend of the court office. The friend of the court office may ask that a parent file a motion asking to formally change the custody order, instead of preparing a stipulation or consent order.

Frequently Asked Custody Questions

Do I need the judge's permission to move out of state with my child?

Yes, if you were granted custody of the child, you must receive the judge's permission to move out of state. The court normally will approve the move if the other parent agrees and both of you sign a stipulation or consent order (a formal agreement). If the other parent does not agree, you will have to file a motion on your own requesting the court's permission to move, or hire an attorney to do it for you.

If I want the court to change custody, do I have to hire an attorney?

No, if the court has ordered custody and you are seeking a modification (a change in the order), you may request a Pro-Per Motion for Change in Custody from the friend of the court office. If you decide to represent yourself, you will be held to the same standards as any licensed attorney practicing law. You may still hire an attorney after you have filed the Pro-Per Motion, if you wish. The friend of the court or the court cannot represent you or give you legal advice.

How many times can the other parent or I ask the court to review custody?

There is no limit to the number of times the court can review custody. However, a parent who is seeking a custody change has to prove a change in circumstances. If the judge does not find a change in circumstances, after a motion has been filed for a change in custody, he or she may assess costs to the parent who filed the motion. This is done to prevent parents from filing motions without legitimate reasons. If there is an established custodial environment, a change of custody may be made only on clear and convincing evidence that the change is in the best interests of the child. If no established custodial environment exists, custody may be changed on a showing of a preponderance of the evidence that the proposed custodial arrangement is in the best interests of the child.

What if I want more information added to the Custody Evaluation Report?

You should contact the person who prepared the report and ask if the information can be added to the report. If the individual does not grant your request, you should provide the information to your attorney. If you are representing yourself, you should bring the information to the attention of the domestic relations referee or the judge at the custody hearing.

What if I find something in the custody evaluation that is not true or is incorrect?

You should contact the person who prepared the report and ask if the correct information could be added to the report. If the individual does not grant your request, you should provide the correct information to your attorney. If you are representing yourself, you should bring the information to the attention of the domestic relations referee or the judge at the custody hearing.

Frequently Asked Custody Questions

Can a friend of the court citizen advisory committee change my custody order?

No, a friend of the court citizen advisory committee cannot change a decision made by a domestic relations referee, or a judge. A citizen advisory committee's responsibility is to make recommendations to the chief judge and the county board of commissioners on how the friend of the court can better meet the community's needs. You should check with your county board of commissioners or county executive to see if your county has a citizen advisory committee.

If I do not agree with the decision made by the referee or the judge, can I have the case transferred to another county?

No, the fact that you disagree with the decision made by a domestic relations referee or a judge is not a reason for which the court rules allow a case to be transferred to another county.

How do I get my case transferred to another county?

There are certain factors that must be met before the friend of the court or the court will transfer a case. MCR 3.212 provides those factors.

Who do I contact if I disagree with the way the law is written?

The Michigan Legislature creates and amends the laws (commonly referred to as statutes). If you think the law should be changed, you should contact your state representative or state senator.

Are there different types of mediation or are all mediation services the same?

There are different forms of mediation services. The differences are outlined in the law and the Michigan Court Rules. Some forms of mediation are: court rule mediation, court rule evaluative mediation, friend of the court formal mediation, and alternative dispute resolution.

What is the difference between a state statute and a Michigan Court Rule?

State statutes start as legislation and are either a house bill or senate bill. If passed by both the Michigan House of Representatives and the Michigan Senate and signed by the governor, the bill then becomes a public act. Each public act amends or creates a statute. A court rule is created by the Michigan Supreme Court and controls procedures in the Michigan Courts.

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