

**37th JUDICIAL CIRCUIT
COURT
FAMILY DIVISION
Friend of the Court**

**PRO PER
FORMS AND
INSTRUCTIONS
FOR
Stipulated Motion and Order
For Credit/Discharge of
Support Arrears**

January 2009 Edition

37th JUDICIAL CIRCUIT COURT
FAMILY DIVISION

**Stipulated Motion and Order for
Credit/Discharge of Child Support Arrears**

IMPORTANT INFORMATION ABOUT CREDITING ARREARS

****This packet can only be used if both parties and/or the payee agree on the credit****

Child Support arrears may only be credited by court order. If the parties and the non-party payee (if applicable) agree to discharge or credit past due support, they may ask the Court for an order to credit the arrears by filing a motion with the Court. The parties and the non-party payee (if applicable) may not agree to credit or discharge any arrears that are owed to the State of Michigan or any other governmental agency. Arrears may not be forgiven without a hearing if the payer has been charged criminally or a referral has been made for prosecution for not paying child support.

To use this form to file a Stipulated Motion and Order for Credit/Discharge of Arrears, the past due support must be owed to an individual payee, and that payee **must agree** to any credit or discharge. If the payee is not a party to the case, in other words, not the Plaintiff or Defendant but someone who had custody of the child/ren at some point, you can use this form as long as the payer and the non-party payee agree to the credit or discharge and sign the forms.

The Stipulated Motion and Order must be filed with the Court Clerk's Office. It must also be sent to the Friend of the Court for approval. Once approved by the Friend of the Court, the proposed stipulated order will be sent for the assigned judge's signature and entry. In most cases, the court will approve the order without scheduling a hearing. Some motions, however, may need to be scheduled for a hearing before the assigned Family Division Referee. If your motion requires a hearing, you will be sent a notice to appear. Both the payer and the payee are required to appear for the hearing.

Use this form if:

1. You have support arrears owed under a support order issued in a case for divorce or separate maintenance (with a case suffix of DM), custody (DC), paternity (DP), family support (DS), other family matters (DZ) or an eligible interstate case; **and**
2. Both parties, or you and the non-party payee, agree and want the court to enter an order that credits or discharges past due support.

You must read and follow all of the instructions before filing the motion and order with the Court. If you fail to follow the instructions, your motion may not be able to be considered by the Court.

You will need to use your court papers from your divorce or separate maintenance (DM), custody case (DC), paternity (DP), family support action (DS), other family action (DZ) or eligible interstate case to fill out the Motion form. If you do not have a copy, one may be obtained from the Circuit Court Clerk's Office. The Clerk's office will charge you for providing copies.

**Instructions for Filing
Stipulated Motion and Order for Credit/Discharge of
Support Arrears**

Items 1 through 6 must be completed before your motion and order can be filed with the Court. The Friend of the Court must review and approve all orders modifying, dismissing or otherwise crediting child support. Read the instruction for each item. Fill in the correct information for that item on the forms. TYPE OR PRINT NEATLY. After filling in the form, you will need to make at least 3 copies.

**INSTRUCTIONS FOR COMPLETING THE MOTION TO
CREDIT/DISCHARGE SUPPORT ARREARS**

- 1 **Case Number**: Obtain your case number from your court papers from your divorce, separate maintenance, custody, paternity, support or eligible interstate case, and copy the Case Number and letter suffix (DM, DC, DP, DZ, DS) from those court papers onto this form. Note: If you have more than one case or more than one payee in the same case for which you are requesting a credit/discharge of arrears, you must file a *separate motion* for each case number and/or for each payee.
- 2 **Plaintiff and Defendant**: Use your court papers to fill in the "Plaintiff" and "Defendant" boxes. Copy the names from your court papers onto this form. A non-party payee must also consent to forgive any child support owed to him/her by signing the Motion for Credit/Discharge of Support Arrears.
- 3 **Assigned Judge**: Refer to your prior court papers to obtain the name of the Assigned Judge for your case. Copy the name of the Judge onto the form. If you cannot locate this information from your paperwork, you can call the Circuit Court Clerk's Office at 269-969-6518 to obtain this information.
- 4 **Support Arrears**. Use this section to identify the person to whom child support arrears are owed that you are asking to be credited in this case. Support arrears may be owed to the other party and/or to a non-party payee. Check the appropriate box.
- 5 **Request for Relief**. Use this section to indicate the agreement between the payer and the payee. Fill in the amount to be credited, and enter the name of the payee who is forgiving the arrears. **If the payee is not a party to the case, you must provide that person's telephone number.** The motion cannot be used if the payer has been charged in a criminal case (or referred for prosecution) for not paying child support. Note that you are affirming that the best interests of the child(ren) will not be adversely affected. Any arrears remaining after the ordered credit is applied must be paid in full or repaid at the amount specified by the Michigan Child Support Formula.
- 6 **Sign the motion**. By signing your motion, you are verifying that the information you have provided is true. Sign and date the motion. Both of the parties or you and the non-party payee must sign the motion indicating that there is an agreement as to the amount of arrears to be credited or discharged.

**INSTRUCTIONS FOR COMPLETING THE ORDER TO
CREDIT/DISCHARGE SUPPORT ARREARS**

Order. Turn to the form entitled “**STIPULATED ORDER CREDITING/DISCHARGING SUPPORT ARREARS,**” and fill in the following:

- 1 Case number;
- 2 Plaintiff and Defendant names and addresses;
- 3 Assigned Judge as you did on the Motion form;
- 4 The amount of arrears to be forgiven; and
- 5 The payee and the payer need to sign the order indicating their approval.

Make Copies. Make 3 copies of the motion and order. One set will be for you to keep. The original and other two sets of documents will be filed with the court.

File the Motion. Mail or drop off the original and two copies of the Motion and Order along with the **filing fee of \$20.00** to:

**37th Circuit Court Clerk
161 E. Michigan Avenue
Battle Creek, MI 49014-4066**

Friend of the Court Approval. Mail or drop off a copy of your Motion and Order to the Friend of the Court for approval.

**Friend of the Court – Order Approval Department
161 E. Michigan Avenue
Battle Creek, MI 49014-4066**

You will receive a signed approval form (or an objection form if there is a problem with your order) from the Friend of the Court by return mail. The Court will send you a copy of the Order after the Friend of the Court has filed an approval and the Assigned Judge has approved and signed the order.

NOTE: In some cases, the Court may determine that the parties will need to appear in court for a hearing before the assigned Family Division Referee. If this happens in your case, you will receive a Notice to Appear. Both the parties and the non-party payee (if applicable) must appear in court for the hearing in order to discharge or credit any arrears. If the Court approves your order without a hearing, you do not need to appear in court in person, and you will receive a signed copy of the Order in the mail.

**STATE OF MICHIGAN
37TH JUDICIAL CIRCUIT-
FAMILY DIVISION
CALHOUN COUNTY**

**STIPULATED MOTION TO
CREDIT/DISCHARGE
SUPPORT ARREARS**

CASE NO:
① _____

Court Address: 161 E. Michigan Ave., Battle Creek, MI 49014-4066

Court Telephone: (269) 969-6518

② Plaintiff's name, address and telephone number

V

Defendant's name, address and telephone number

③ Assigned Judge: Hon. _____

NOW COME the parties, appearing in Pro Per, and in support of their Stipulated Motion to Credit/Discharge Support Arrears, state as follows:

- ④ 1. There is a support arrears owed to the Plaintiff, Defendant, Non-Party Payee.
- ⑤ 2. The payer and payee agree that \$ _____ should be credited against the child support owed to _____.
- (Name of Payee) (Telephone Number)
3. The payee is not acting under fear, coercion or duress.
4. The accrual of the arrears was not caused by the payer intentionally avoiding his/her support obligation.
5. The payer and payee are not aware of any pending criminal charges related to the payer's failure to pay child support.
6. Forgiving or crediting the arrears will not be contrary to the best interest of the child/ren.
7. The payer and payee understand that once the arrears owed are credited or discharged, they cannot be reinstated and will be forever discharged.

WHEREFORE, the undersigned request that the court enter an order granting relief from the support arrears as indicated above.

I declare that the above statements are true to the best of my information, knowledge and belief.

⑥

Date

Signature of Plaintiff

Date

Signature of Defendant

Date

Signature of Non-party Payee

Court Address: 161 E. Michigan Ave., Battle Creek, MI 49014-4066

Court Telephone: (269) 969-6518

② Plaintiff's name, address and telephone number

V

Defendant's name, address and telephone number

③ Assigned Judge: Hon. _____

THE COURT HAVING READ THE MOTION OF THE PARTIES FINDS THAT:

1. This Order is being entered pursuant to a stipulation between the payer and the payee of child support in this case.
- ④ 2. Both the payer and the payee signed the Motion to Credit and/or Discharge the Arrears owed to the Payee in the amount of \$_____.
3. The payer and payee have agreed to credit and discharge the arrears and:
 - a) The recipient of support is not acting under fear, coercion or duress;
 - b) The arrears did not accrue because the payer intentionally avoided paying his/her support obligation;
 - c) The parties and non-party payee are not aware of any criminal non-support actions or referrals pertaining to the amounts due to the payee;
 - d) The discharge/credit of the arrears is not contrary to the best interest of the children.

STIPULATED ORDER TO CREDIT/DISCHARGE SUPPORT ARREARS – PAGE 2

IT IS ORDERED:

Based upon the agreement of the payer and payee, the motion is granted and past due support owed to the payee (name)_____ in the amount of \$_____ is forgiven and credited to the payer's support obligation. All statutory fees and court costs owed on this file shall be paid by the payer by/within _____(date or number of days). Any remaining child support arrears shall be repaid in the amount calculated using the Michigan Child Support Formula.

Consent:

Signature of Plaintiff

Signature of Defendant

Signature of Non-party Payee

Assigned Judge

The assigned Judge has determined that this matter must be scheduled for a hearing before the assigned Family Division Referee. [Court staff, please forward to assigned Referee Assistant for scheduling and notice.]

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties and their attorneys by first class mail addressed to their last known addresses as defined in MCR 3.203.

Date

Signature