

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

**PRO PER
FORMS AND
INSTRUCTIONS
FOR**

**PAYMENT
PLAN/DISCHARGE OF
ARREARAGE**

Pro Per Forms and Instructions for Payment Plan/Discharge of Arrears

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37th JUDICIAL CIRCUIT COURT

FAMILY DIVISION

Motion For Payment Plan/Discharge of Arrearage

IMPORTANT INFORMATION ABOUT DISCHARGE OF ARREARS

Under the law, a payer of support may ask the court for relief from accumulated past due support by filing a motion for a payment plan to pay arrearages and to discharge or abate arrearages.

If the past due support is owed to an individual payee and that payee consents to the requested relief, the court must be satisfied (and the order must state) that:

- 1) The payee is not acting under fear, coercion or duress,
- 2) The arrearage did not arise from conduct engaged in exclusively for the purpose of avoiding the support obligation, and
- 3) To the best of the parties' knowledge, the arrears are not the subject of a criminal action or referral.
- 4) The plan is in the best interest of the parties and children.
- 5) A consent order (stipulation) for crediting arrears must be approved by the Friend of the Court.

If the support is owed to the State of Michigan or a political subdivision of the State, the court must be satisfied that:

- 1) The arrearage did not arise from conduct engaged in exclusively for the purpose of avoiding the support obligation,
- 2) The payer has no present or future ability to pay the arrearage without a payment plan, and
- 3) The payment plan will pay a reasonable portion of the arrearage over a reasonable period of time in accordance with the payer's current ability to pay.
- 4) The Office of Child Support (State of Michigan) has been served with a copy of the motion at least 56 days before the hearing. (*Note: The Office of Child Support must approve all payment plans where money is owed to the State of Michigan.*)
- 5) The plan is in the best interest of the parties and children.

Requirements for payment plans: Payment plans approved for discharge of a portion of arrears owed to the State of Michigan or a political subdivision must, by law:

- 1) Require payments for at least 24 months if the payer's income is at or below the poverty level, or
- 2) Require payments for at least 24 months plus one (1) additional month for every \$1,000.00 of annual income the payer has which exceeds the poverty level.

Note: the determination of poverty level income changes annually. Appendix A on page 14 lists the 2007 Poverty Guidelines. Later guidelines can be found at the following web site:

<http://aspe.hhs.gov/poverty>

37th JUDICIAL CIRCUIT COURT FAMILY DIVISION

Motion For Payment Plan/Discharge of Arrearage

If you are considering filing your own motion to request approval of a payment plan and discharge of arrearage, you must understand the following:

- You will be representing yourself.
- Employees of the Circuit Court and the Office of the Friend of the Court are not allowed to assist you.
- You will be required to follow all Michigan Court Rules, Michigan Rules of Evidence, statutes and case law.
- You must properly fill out and complete the motion form.
- You must obtain a correct hearing date time and location.
- You must properly file the motion
- You must properly serve the motion on the other party.
- You must properly file your proof of service.
- You must properly present your case before the referee.
- If your motion is set over for an evidentiary hearing, you must call witnesses and present all evidence correctly.
- Following the motion or evidentiary hearing, you may need to prepare and process an order correctly if directed to do so by the referee.

Information regarding procedures for filing, serving and obtaining an order are contained within these instructions. Further information may be available at the Calhoun County Family Division/Friend of the Court or State Court Administrative Office Web Site:

<http://www.calhouncountymi.gov/Departments/FriendOfTheCourt/overviewFOC.htm>
<http://courts.michigan.gov/scao/services/focb/mcsf.htm>

Motion For Payment Plan/Discharge of Arrearage

Use this form if:

- 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) or other family matters (DZ); **and**
- You want to ask the court for an order that sets a payment plan and qualifies your case for relief from a portion of your arrearage, **or**
- Your arrearage or a portion of your arrearage is owed to the recipient of support in your case, and you and the recipient wish the court to order relief from some or all of that arrearage pursuant to your agreement.
- **YOU MAY NOT USE THESE FORMS** for case types other than those listed above. Generally, these forms can only be used in case actions whose classification code ends with DM, DP, DC, DS, and sometimes DZ, DR. Note: Some interstate cases are eligible for motions using the pro per process. It is recommended that you contact the Friend of the Court, Interstate Enforcement Unit, to determine if your interstate case is eligible.

By filling in these forms and using the instructions, you are representing yourself in a court action regarding support. The court and the parties are required to follow the Michigan Court Rules, the Michigan Rules of Evidence and applicable statutes and case law in presenting and considering motions to change any current court orders.

To allow the Court to consider your request, you must follow the instructions. **Please read all of the instructions before beginning the motion process.** If you fail to do even one of the required steps, the court may not be able to consider your request, and your motion could be dismissed. You may also be ordered to pay court costs and attorney fees to the other party or the court.

After you fill out the motion form, you must file it with the court and serve it on the other party. Remember, if money is owed to the State of Michigan you must also serve the Office of Child Support at least 56 days prior to your motion hearing. You will then need to attend the motion hearing. Again, read these instructions carefully and use the checklist to make sure you've done what you need to do. Additional information is available at the County/Court website and/or SCAO website indicated on the following page.

You will need to use your court papers from your divorce or separate maintenance (DM), custody case (DC), paternity (DP), family support action (DS or 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.

INSTRUCTIONS FOR FILING A MOTION AND SERVING A MOTION

Read these instructions carefully. You may be able to find additional information at the following web sites:

<http://www.calhouncountymi.gov/Departments/FriendOfTheCourt/overviewFOC.htm>

<http://courts.michigan.gov/scao/services/focb/mcsf.htm>

FILING A MOTION

1. Fill out the motion form.

Use the instructions provided. Be careful not to make mistakes.

As noted in the “Instructions for Completing Motion for Payment Plan/Discharge of Arrears”, before filling out the "Notice of Hearing" part of the form, you must contact the assigned Referee Assistant (269-969-6500) to obtain information about which day of the week the Family Division Referee to whom your case is assigned hears motions. If you know to which Referee your case is assigned, you can view his or her motion calendar at the following web site:

<http://www.calhouncountymi.gov/Departments/FriendOfTheCourt/RefereeCal.htm>

You must then pick a date far enough in advance to give proper notice to the other party and to the Office of Child Support (State of Michigan) if your arrears are owed to the State. If you are going to have the motion personally served on the other party, it must be served at least 7 days prior to the scheduled hearing. If you are going to serve the other party by regular (first class) mail, it must be mailed at least 9 days prior to the scheduled hearing. *If your motion is for a payment plan and relief from State arrearages, you must serve notice on the Office of Child Support at least 56 days prior to the hearing date. The address is: OCS Operations/Arrears Payment Plan Review Unit, P.O. Box 30744, Lansing, MI 48909-8250.* Remember to completely fill out the “Notice of Hearing” section with the date, location of hearing, and name of the Referee who will be hearing your motion.

Make at least 4 copies of all pages of your motion after you have filled it out.

2. File the Motion form with the Circuit Court Clerk (Main floor, Justice Center).

Take the original and 4 copies of the Motion to the Circuit Court Clerk. You must pay a \$20.00 filing fee when you file your motion.

Remember to make sure the name of the assigned Judge and assigned Referee are indicated on your motion. The Circuit Court Clerk will keep the original and 1 copy of the motion and any attachments. The original is for the court file and the Court Clerk will forward a copy to the Friend of the Court. The Court Clerk will return the remaining copies and any remaining attachments to you. Do not lose them.

After you have filed your Motion with the Circuit Court Clerk, you will need 2 copies of the Motion and Notice of Hearing, as well as an original and four copies of the Certificate of Mailing. You will need:

- One copy for your records
- One copy of the Motion and Notice of Hearing to serve (mail) on the other party
- The original and four copies of the Certificate of Mailing to file as proof of service (one for the court file and one for the Friend of the Court), one Certificate of Mailing for your records, and one copy for the other party.

SERVING THE MOTION ON THE OTHER PARTY

1. Serve the Motion, Notice of Hearing and Certificate of Mailing on the other party.

- A.** The other party must be served with the Motion and Notice of Hearing at least 9 days before the hearing date, if service is by mail, and at least 7 days before the hearing if service is made personally. You may serve the papers by mailing them to the other party by regular, first class mail.
- B. NOTE:** If your request is for a payment plan and relief from arrears owed to the State of Michigan or any political subdivision of the State, you must serve a copy of your Motion and Notice of Hearing on the State of Michigan, OCS Operations/Arrears Payment Plan Review Unit, P.O. Box 30744, Lansing, MI 48909-8250 at least 56 days before the date of hearing.

What you need for service:

- 1 copy of the Motion with any attachments, Notice of Hearing, and Proof of Service/Certificate of Mailing – for the other party
- The original and one copy of the Certificate of Mailing to file with the Circuit Court Clerk

2. Return to the Circuit Court Clerk.

Once you have served the motion and notice of hearing, return to the Circuit Court Clerk's Office with the completed Proof of Service/Certificate of Mailing and one copy. Remember to keep one copy for your records. The Circuit Court Clerk will deliver one copy to the Friend of the Court.

3. Response from the other party.

If you receive a response to your motion from the other party, make sure you read it before you attend the motion hearing. Think about what you want to say on your behalf.

4. Attend the motion hearing.

You must attend the hearing on your motion. You must appear on time for your motion. Failure to arrive on time and to be prepared will likely result in the dismissal of your motion. Court costs and attorney fees may also be ordered. You will be required under oath to assure the Court that you have properly served the other party with a copy of the Motion and Notice of Hearing.

THE MOTION HEARING (Motion Practice)

In Calhoun County, a Motion for Payment Plan/Discharge of Arrears is heard by the assigned Family Division Referee. The purpose of the motion hearing is to allow the Court the opportunity to determine if the facts you have stated are accurate and if the court should consider your request. If, after considering your position and that of the other party, the referee determines that you have established good cause to consider granting your request, your motion will either be granted or it may then be scheduled for an evidentiary hearing. (Note: If you and the other party are in agreement regarding the relief you have requested, and/or if the relief involves arrears owed only to that party, the referee may consider granting the relief immediately at the motion hearing.)

If the referee decides to set an evidentiary hearing, you will need to advise the referee of the number of witnesses and/or other evidence you intend to use at the time of the hearing, so that the referee can schedule an adequate amount of time for the hearing. In complex cases, you may also be required to file a witness list with the Court and the other party, exchange records, or comply with any other request that the Court deems appropriate. If the Court determines the need for these things, the Court will issue a "Scheduling Order" that outlines what each party has to do and the time frames for doing it. If the referee determines that there is not good cause to consider granting the relief requested, your motion will be dismissed at the motion hearing.

ATTENDING YOUR MOTION HEARING:

1. Since you are representing yourself, you are expected to conduct yourself just as an attorney would. You will be required to follow the same general rules an attorney must follow. You can expect that the referee has read your motion, any response from the other party, and has reviewed your court file.
2. Make a list of information you feel is important for the referee to know. The information should relate to the reasons stated in your motion. Your list will be helpful as a reminder to bring up all the points you feel are important.
3. Go to the hearing room on the scheduled day and time. Dress neatly. Get there 10 or 15 minutes early.
4. Go to the hearing room and let the Referee Assistant know that you are there for a hearing, and that you are representing yourself. **DO NOT** interrupt any hearing in progress. Take a seat in the waiting area and wait for your case to be called.
5. When your case is called, go to the hearing area and clearly state the following:
 - Your name
 - That you are representing yourself
 - That you are requesting an order for relief from arrears
 - The facts or reasons for your request (**bring papers showing the amount of arrears owing on your case and whether those arrears are owed to an individual or to a public agency**)
 - Why you believe this order would not be contrary to the best interests of the child(ren).
6. If the other party is in court, he or she will have a chance to speak also. When the other party talks, take notes. **DO NOT** interrupt the other party. After the other party speaks, you may have more time to talk. Taking notes will help you with this.

THE EVIDENTIARY HEARING: If at your motion hearing the referee determines that you have established good cause to consider your request, an evidentiary hearing will be set for a future date. At the evidentiary hearing, you will be required to present evidence and testimony in support of your request for relief from arrears. You may also be directed to prepare the Order for Relief from Arrears (available in this booklet). **Bring a blank Order for Relief From Arrears with you to the hearing.**

1. Just as at your motion hearing, you will be representing yourself. You are expected to conduct yourself just as an attorney would. You will be required to follow the same general rules an attorney must follow. You can expect that the referee has reviewed your motion, any response from the other party, and has reviewed the decision from your motion hearing.
2. Make a list of information you feel is important for the referee to know, and of any witnesses you will be calling to support your position. The information should relate to the reasons stated in your motion. Your list will be helpful as a reminder to bring up all the points you feel are important.
3. Go to the hearing room on the scheduled day and time. Dress neatly. Get there 10 or 15 minutes early.
4. Go to the hearing room and let the Referee Assistant know that you are there for a hearing, and that you are representing yourself. **DO NOT** interrupt any hearing in progress. Take a seat in the waiting area and wait for your case to be called.
5. When your case is called, go to the hearing area and clearly state the following:
 - Your name
 - That you are representing yourself
 - That you are requesting an order for relief from arrears
 - The facts or reasons for your request (**bring papers showing your account status (to whom support is owed and the specific amount of arrears)**)
 - Why you believe this order would not be contrary to the best interests of the child(ren).
6. When the referee makes a decision, **LISTEN CAREFULLY** to what is said. If you are directed to prepare an order, you must follow the instructions on the packet for preparing the “Order for Payment Plan and Discharge of Arrearage” and you must accurately prepare the order exactly as the Referee has stated. You may be responsible for preparing the order even if what was ordered is not what you are asking for.

NOTE: Under the Michigan Court Rules, a referee’s order has immediate interim effect for a 21-day period, after which it becomes a final order of the court unless a party has filed a motion to have the order set aside. This is a separate procedure for which instructions and forms may be obtained from the Friend of the Court.

INSTRUCTIONS FOR COMPLETING "MOTION FOR PAYMENT PLAN/DISCHARGE OF ARREARS"

Please print neatly. After filling in the form, you will need to make at least 5 copies of the form.

Items A through K must be completed before your motion can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Before you fill in the Case No., get your court papers from your divorce or separate maintenance (DM), custody (DC), paternity (DP), family support action (DS or DZ) or eligible interstate case, and copy the Case No. and letter suffix from those court papers onto this form. **Note: If you have more than one case under which you are requesting relief from arrears, you must file a separate motion for each case number.**
- B** Also use your court papers to fill in the "Plaintiff" and "Defendant" boxes and if applicable, the "Third Party" box. Copy the names from these court papers onto this form. For example, if your name is in the box that says "plaintiff", then you should write your name in the "plaintiff" box on this motion form. You are the "moving party". Once you have written the names where they belong, you must check the box "moving party" in the same box as your name.
- C** **Check either box a or b.** If you have a judgment or order for divorce, separate maintenance, paternity, family support or an eligible interstate case, read the latest (most recent) order carefully to find out if there is any information about current support. If there is information about current support, check box a. If there is no current support (support set at zero, or youngest child emancipated), check box b.
- D** Use this section to specify the amount of arrears on the case. Support arrears may be owed to a payee, to the State of Michigan, or to another public agency such as Foster Care. Indicate in lines 2, 3, and 4 the amount of arrears owed to each.
- E** You need to **explain in as much detail** as possible what you want the court to order (your payment plan). Write in the details. If you need more space, use a separate sheet of paper and check the box "see attached sheet". Remember, if you are requesting a payment plan for discharge of arrears owed to the State of Michigan or to a political subdivision, you must present a plan for arrearage payments over at least 24 months (increase by one month for every \$1,000 of annual income over the poverty level (see Appendix A). Print this information as neatly as you can. You will need copies of both sheets.
- F** Please double-check what you have written in your motion. **By signing your motion, you are verifying that the information you have provided is true.** Write in today's date and sign your name. Now contact the assigned Family Division Referee Assistant (269-969-6500) to obtain a motion hearing date. See page 3 "Filing A Notice of Hearing" for details. You may also be able to access the assigned Referee's calendar at the following Calhoun County/Court Web Site for hearing date information (<http://www.calhouncountymi.gov/Departments/FriendOfTheCourt/RefereeCal.htm>). **Remember when obtaining your hearing date that you must give at least 56 days notice to the Office of Child Support if the arrears are owed to the State of Michigan or a political subdivision.**
- G** Note: you must select a hearing date far enough in advance to give proper notice to the other party (at least 9 days for mailing the motion and at least 56 days if you must provide notice to the Office of Child Support). Once you get a hearing scheduled, fill in the full name of the assigned Family Division Referee who will be hearing this motion, the date of the hearing, the time of the hearing (include whether it is a.m. or p.m.), and the location (hearing room) of the hearing. Note that the name of the Judge and the assigned referee must also be written where indicated at the top of the motion form.

- Make copies of your motion form and attachments for you, for the other party (or parties), the Office of Child Support (if required) and for the Friend of the Court. Go to the Circuit Court Clerk's office in the Justice Center in Battle Creek with the original and a copy of all pages of this form. These must be filed with the Circuit Court Clerk (the original for the court file and one for the Friend of the Court).
 - **STOP** Read "Instructions for Filing a Motion and Serving a Motion" in this booklet for additional details on filing your motion with the Court and serving your motion on the other party and (if required) the Office of Child Support.
 - **Note:** Timeliness is very important. Failure to file and serve your motion will result in the delay or dismissal of your motion, and costs may be ordered.
- H** On the date you mail 1 copy of all pages of your motion to the other party and (if required) to the Office of Child Support, write in the date and sign your name on the Certificate of Mailing. The date that you sign the Certificate of Mailing must be the date that you mailed your motion and attachments (if any) to the other party.
- Return to the county clerk with 2 copies of the Certificate of Mailing.

You must be sure to read this entire booklet.

B Plaintiff's name, address and telephone no. [] moving party

v Defendant's name, address, and telephone no. [] moving party

Third Party's name, address and telephone no. [] moving party

Assigned Judge: Hon. _____

Assigned Referee: _____

MOTION

C 1. [] a. On _____ a judgment or order was entered regarding current support.
Date

[] b. There is no order in effect for current support.

D [] 2. There is a support arrearage of \$ _____ owed to the [] plaintiff [] defendant

[] 3. There is a support arrearage of \$ _____ owed to the State of Michigan.

[] 4. There is a support arrearage of \$ _____ owed to _____

E [] 5. I ask the court to order a payment plan and relief from support arrears as follows: [] see attached sheet
(Use page 2 for further explanation of relief requested)

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

F _____
Date

Moving Party's Signature

NOTICE OF HEARING

A hearing will be held on this motion before _____, Family Division Referee,
Name of Referee

G on _____ at _____ in hearing room # _____, Justice Center,
Date Time 161 E. Michigan Ave., Battle Creek, Michigan.

B Plaintiff's name, address and telephone no. [] moving party v Defendant's name, address, and telephone no. [] moving party

Third Party's name, address and telephone no. [] moving party

5. Continued from Page 1

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

G _____
Moving Party's Signature

Date

NOTE: If you are the person receiving this motion, you should file a response. Use instructions and forms for Answer to Motion for Payment Plan/Discharge of Arrears.

B Plaintiff's name, address and telephone no. Moving party v Defendant's name, address, and telephone no. moving party

Third party's name, address and telephone no. Moving party

PROOF OF SERVICE

- I CERTIFY THAT ON THIS DATE I PERSONALLY SERVED A COPY OF THIS MOTION AND NOTICE OF HEARING ON THE OTHER PARTY

- I CERTIFY THAT ON THIS DATE I MAILED A COPY OF THIS MOTION AND NOTICE OF HEARING TO THE OTHER PARTY BY ORDINARY MAIL AT THE ABOVE ADDRESS.

- I CERTIFY THAT ON THIS DATE I MAILED A COPY OF THIS MOTION AND NOTICE OF HEARING TO THE STATE OF MICHIGAN, OFFICE OF CHILD SUPPORT: OCS Operations/Arrears Payment Plan Review Unit, P.O. Box 30744, Lansing, MI 48909-8250 (required for discharge of arrears owed to the State or a political subdivision of the State – must be served at least 56 days prior to hearing).

H _____
Date

Moving Party's Signature

MOTION CHECKLIST YOUR FINAL REVIEW

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Fill out all requested information on the form? YES []
2. Make 4 copies of all pages of your motion? YES []
3. Pay the motion fee to the Circuit Court Clerk? YES []
4. Mail (serve) a copy of the Motion, Notice of Hearing, and Certificate of Mailing on the other party and any other third party after the judge, Referee and hearing date have been assigned to your case? YES []
5. Mail (serve) a copy of the Motion, Notice of Hearing, and Certificate Of Mailing to the Office of Child Support (for State arrears)? YES [] (if required)
6. Return to the Circuit Court Clerk's Office **after** you mailed the motion and notice of hearing to the other party and completed the certificate of mailing? YES []
7. Keep one copy of the Motion and Notice of Hearing for yourself? YES []
8. Give 2 copies of the completed Certificate of mailing to the Circuit Court Clerk? YES []

If you cannot answer "yes" to all of the above steps, a hearing on your motion may be delayed or your motion may be dismissed, and costs and attorney fees may be assessed.

By using this form packet you are representing yourself in a court action regarding your request for a payment plan and discharge of arrears. To allow the court the ability to consider your request, you must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not be able to consider your request, and your motion may be dismissed and you may be ordered to pay court costs and attorney fees.

APPENDIX A: POVERTY GUIDELINES 2007

2007 HHS Poverty Guidelines

| Persons in Family or Household | 48 Contiguous States and D.C. | Alaska | Hawaii |
|---------------------------------|-------------------------------|----------|----------|
| 1 | \$10,210 | \$12,770 | \$11,750 |
| 2 | 13,690 | 17,120 | 15,750 |
| 3 | 17,170 | 21,470 | 19,750 |
| 4 | 20,650 | 25,820 | 23,750 |
| 5 | 24,130 | 30,170 | 27,750 |
| 6 | 27,610 | 34,520 | 31,750 |
| 7 | 31,090 | 38,870 | 35,750 |
| 8 | 34,570 | 43,220 | 39,750 |
| For each additional person, add | 3,480 | 4,350 | 4,000 |

SOURCE: *Federal Register*, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148

Determination of poverty level income changes annually. Current guidelines can be found at the following web site:

<http://aspe.hhs.gov/poverty>

37th JUDICIAL CIRCUIT COURT FAMILY DIVISION

Answer to Motion for Payment Plan/Discharge of Arrears

Use this form if you are served with a copy of a Motion for Payment Plan/Discharge of Arrears. By filling out this form, you are submitting answers to the court and the other party regarding the statements made in the motion.

Note: If you want to assure that the court will consider your position, you must file an Answer and appear at the hearing. Do not simply appear at the hearing and expect the court to consider your position.

By filling in this form and using the instructions, you are representing yourself in a court action regarding support. The Court must be sure that you and the other party follow the Michigan Court Rules, Michigan Rules of Evidence, and applicable statutes and case law in presenting and considering motions and Answers to motions to change any current court orders. In order for the court to consider granting the relief that is sought, you must follow the instructions.

To allow the Court to consider your Answer, you must follow the instructions carefully. **Please read all of the instructions before beginning your Answer.** If you fail to do even one of the required steps, the court may not be able to consider your Answer, and your Answer could be ignored and costs and attorney fees ordered for you to pay to the other party or the court.

After you fill out the Answer form, you must file it with the Circuit Court Clerk, the Friend of the Court, and serve it on the other party. You will then need to attend the motion hearing. Read the instructions for these things and use the checklist to make sure you've done what you need to do.

You will need to use your copy of the Motion for Payment Plan/Discharge of Arrearage and court papers to fill out this Answer form.

INSTRUCTIONS FOR USING THE ANSWER TO MOTION FORM

FILING AN ANSWER

1. Fill out the Answer to Motion form.

If you receive a motion and notice of hearing from the other party, you need to respond in writing to the party and the court. Use the instructions for the Answer to Motion form. Be careful not to make any mistakes.

After you have filled out your Answer to Motion form, make enough copies of the form and any attachments to serve the other party, any third party, and to file with the Circuit Court Clerk and the Friend of the Court.

2. File the Answer form with the Circuit Court Clerk.

Take the original and 3 copies of the form to the Circuit Court Clerk at the Justice Center in Battle Creek. The Circuit Court Clerk will keep the original for the court file and will send one copy to the Friend of the Court. Then the Clerk will return 2 copies and any remaining attachments to you. Do not lose them.

When you leave the Circuit Court Clerk's Office, you should have 2 copies of the Answer form with attachments. You should also prepare the original and make copies of the Certificate of Mailing:

- One copy of your Answer and Certificate of Mailing for your records
- One copy of your Answer and Certificate of Mailing to serve on the other party and on any third party
- The original and two copies of the Certificate of Mailing to file as proof of service (one for the court file and one for the Friend of the Court), one Certificate of Mailing for your records, and one copy for the other party.

SERVING YOUR ANSWER ON THE OTHER PARTY

1. Serve Your Answer on the other party.

The other parent, or other party (if there is a custodian or guardian other than a parent) must be served with your Answer. You may choose to have the party served personally, or you may serve the party by regular, first class mail. If you choose personal service, the party must be served a copy of your Answer at least 3 days before the hearing date. If you serve by ordinary mail, you must mail your Answer at least 5 days before the hearing date.

What you need for service:

1 copy of your Answer form with any attachments – for the other party
The original and one copy of the Certificate of mailing – for proof of service

Serve 1 copy of your Answer with attachments and a completed Certificate of Mailing on the other party and on any third party. Keep 1 copy for your records.

2. Return to the Circuit Court Clerk.

Once you have served a copy of your Answer and the Certificate of Mailing or a proof of service on the other party, return to the Circuit Court Clerk's Office with the original Certificate of Mailing and 1 copy. Remember to keep one copy for your records. The Clerk will deliver one copy to the Friend of the Court.

3. Attend the hearing.

You should attend the hearing on the motion if you want the court to consider your Answer.

ATTENDING THE MOTION HEARING:

1. Since you are representing yourself, you are expected to conduct yourself just as an attorney would. You will be required to follow the same general rules an attorney must follow. You can expect that the referee has read the motion from the other party, your Answer, and has reviewed your court file.
2. Make a list of information you feel is important for the referee to know. The information should relate to the reasons stated in your Answer. Your list will be helpful as a reminder to bring up all the points you feel are important.
3. Go to the hearing room on the scheduled day and time. Dress neatly. Get there 10 or 15 minutes early.
4. Go to the hearing room and let the Referee Assistant know that you are there for a hearing, and that you are representing yourself. DO NOT interrupt any hearing in progress. Take a seat in the waiting area and wait for your case to be called.
5. When your case is called, go to the hearing area and clearly state the following:
 - Your name
 - That you are representing yourself
 - That you are responding to a motion for a support order or a change in a support order
 - The facts or reasons for your Answer
6. The moving party will be asked to speak in support of the motion. When the other party talks, take notes. DO NOT interrupt the other party. After the other party speaks, you will be given the opportunity to speak. Taking notes will help you with this.
7. At the motion hearing, the referee will determine if there is good cause to consider granting the relief requested in the Motion. If the referee determines that the moving party has established a good cause for consideration, the motion may be granted immediately, or an evidentiary hearing may be set for a future date. If good cause is not established, the referee may require you as the answering party to prepare the dismissal order.

If the Referee decides that an Evidentiary Hearing is required, the following will apply.

THE EVIDENTIARY HEARING: At the evidentiary hearing, the moving party will be required to present evidence and testimony in support of the request for a payment plan and discharge of arrearage. As the responding party, you will be given the opportunity to present your own evidence and testimony.

1. Just as at the motion hearing, you will be representing yourself. You are expected to conduct yourself just as an attorney would. You will be required to follow the same general rules an attorney must follow. You can expect that the referee has reviewed the other party's motion, your Answer, and has reviewed the decision from the motion hearing.
2. Make a list of information you feel is important for the referee to know, and of any witnesses you will be calling to support your position. The information should relate to the reasons stated in your motion. Your list will be helpful as a reminder to bring up all the points you feel are important.
3. Go to the hearing room on the scheduled day and time. Dress neatly. Get there 10 or 15 minutes early.
4. Go to the hearing room and let the Referee Assistant know that you are there for a hearing, and that you are representing yourself. DO NOT interrupt any hearing in progress. Take a seat in the waiting area and wait for your case to be called.
5. When your case is called, go to the hearing area and clearly state the following:
 - Your name
 - That you are representing yourself
 - That you are responding to a motion for a support order or a change in a support order
 - The facts or reasons supporting your Answer
6. When the referee makes a decision, LISTEN CAREFULLY to what is said. You should write down exactly what the referee states, so that you can be sure that the resulting order reflects exactly what is ordered in court.

NOTE: Under the Michigan Court Rules, a referee's order has immediate interim effect for a 21-day period, after which it becomes a final order of the court unless a party has filed a motion to have the order set aside. This is a separate procedure for which instructions and forms may be obtained from the Friend of the Court.

GENERAL INSTRUCTIONS FOR COMPLETING "ANSWER TO MOTION FOR PAYMENT PLAN AND DISCHARGE OF ARREARAGE" Please print neatly. After filling in the form, you will need to make
at least 4 copies.

Items **A** through **J** must be completed before your Answer can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

A Before you fill in the Case Number, get your copy of the Motion. Be sure that the moving party (the person who filed the motion) has correctly identified the correct case, and copy the Case Number from that paper onto this form.

B Also use the motion to fill in the "Plaintiff", "Defendant", and "Third Party" boxes. Copy the names from the motion onto this form. For example, if your name is in the box that says "plaintiff", then you should write your name in the "plaintiff" box on this Answer form.

The other party is the "moving party". Once you have written the names where they belong, you must check the box "moving party" in the same box as the other party's name.

C **Check only one box.** If you have a judgment or order for divorce, separate maintenance, paternity, or family support, other family or eligible interstate order, read it carefully to find out if there is any information in it about current support. If there is information about current support, check box a. If there is no information about current support, check box b.

D Write in the amount of past due support that is owed to you. You may get this information from your records or from the Friend of the Court.

E If you agree with the payment plan as specified in the other party's Motion, you should check the first box. If you disagree with the other party's payment plan, write in what you are in disagreement with, and any other detailed information you want the court to know and consider. If you need to use more space, use the second page and check the box "See separate page".

F If you and the other party have made an agreement that some or all of the arrearage that is owed to you should be dismissed, you must check this box. By doing so, you are stating to the court that the conditions enumerated are true. *Note: If you and the other party agree to dismissal of some or all of the support arrears owed to you, you may be able to stipulate to an order without a hearing. Court policy requires Friend of the Court approval of stipulated orders, and requires such orders to state required conditions.*

G Check the first box if you agree with what is being asked for in the Motion (a payment plan and subsequent discharge of arrearage). If you do not agree with what is being asked for, and you want the other party to pay the arrearage as ordered by the court, check the second box.

H Write in today's date and sign your name.

- Make copies of your Answer and attachments for you, for the other party(ies), and for the Friend of the Court. Go to the Circuit Court Clerk's office in the Justice Center in Battle Creek with the original and a copy of all pages of this form. These must be filed with the Circuit Court Clerk (the original for the court file and one for the Friend of the Court).

- **STOP.** Please read “Instructions for Using the Answer to Motion Form” in this booklet for additional details on filing your Answer with the Court and serving your answer on the other party.
- **Note:** Timeliness is very important. Failure to file and serve your Answer will result in delay, or the motion being granted without consideration of your position and attorney fees may be ordered

I On the date you mail 1 copy of all pages of your motion to the other party, write in the date and sign your name on the Certificate of Mailing. The date that you sign the Certificate of Mailing must be the date that you mailed your Answer and attachments (if any) to the other party.

- Return to the Circuit Court Clerk with 2 copies of the Certificate of Mailing.

You must be sure to read this entire booklet.

B Plaintiff's name, address and telephone no. moving party v Defendant's name, address, and telephone no. moving party

Third party's name, address and telephone no. moving party

ANSWER TO MOTION

C 1. a. On _____ a judgment or order was entered regarding current support.
Date
 b. There is no current support (support is zero or youngest child has emancipated).

D 2. The plaintiff defendant owes past due support of \$_____ to me.

E 3. I agree do not agree with the payment plan as presented in the Motion.
Explain in detail what you disagree with and why. Include all necessary facts. Use a separate sheet of paper if needed. separate sheet attached.

F 4. I agree with the other party to discharge support owed to me in the amount of \$_____:
In agreeing with this request to discharge support, I state affirmatively to the court:
1) I am not acting under fear, coercion or duress
2) The arrearage did not arise from conduct by the payer engaged in exclusively for the purpose of avoiding the support obligation
3) Discharging the support arrearage will not be contrary to the best interest of the minor child(ren)
4) To the best of my knowledge, the arrearage is not the subject of a criminal non-support referral or proceeding.

G 5. a. I agree with what is being asked for in the motion.
 b. I do not agree with what is being asked for in the motion and ask the court to order the support arrearage to be paid as ordered

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

H _____
Date

Responding Party's Signature

B Plaintiff's name, address and telephone no

v

Defendant's name, address and telephone no.

Third party's name, address and telephone no.

E Additional information (Section 3):

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

H _____
Date

Responding Party's Signature

B Plaintiff's name, address and telephone no

v

Defendant's name, address and telephone no.

Third party's name, address and telephone no.

PROOF OF SERVICE

I CERTIFY THAT ON THIS DATE I PERSONALLY SERVED A COPY OF THIS ANSWER TO MOTION ON THE OTHER PARTY

I CERTIFY THAT ON THIS DATE I MAILED A COPY OF THIS ANSWER TO MOTION TO THE OTHER PARTY BY ORDINARY MAIL AT THE ABOVE ADDRESS.

I _____
Date

Responding party's signature

ANSWER TO MOTION CHECKLIST YOUR FINAL REVIEW

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

- | | |
|--|----------------------------------|
| 1. Fill out all requested information on the form? | YES [<input type="checkbox"/>] |
| 2. Make all necessary copies? | YES [<input type="checkbox"/>] |
| 3. File your Answer to motion form with the Circuit Court Clerk? | YES [<input type="checkbox"/>] |
| 4. Mail (serve) a copy of the Answer to the other party and any other custodian/guardian? | YES [<input type="checkbox"/>] |
| 5. Return to the Circuit Court Clerk's Office after you served your Answer on the other party and completed the Proof of Service? | YES [<input type="checkbox"/>] |
| 6. Keep one copy of the Answer to Motion form for yourself? | YES [<input type="checkbox"/>] |
| 7. Give 2 copies of the completed form to the Circuit Court Clerk? | YES [<input type="checkbox"/>] |

If you cannot answer “yes” to all of the above steps, your Answer to the other party’s Motion for Payment Plan and Discharge of Arrearage may not be able to be considered by the court.

You should attend the hearing on the motion if you want the court to consider your Answer. You must appear on time for the motion hearing. Failure to arrive on time or to be prepared may result in the motion being granted without consideration of your Answer. You will be required under oath to assure the Court that you have properly served the other party with a copy of your Answer to Motion Regarding Support.

By using this form packet you are representing yourself in a court action regarding support. You must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not be able to consider your Answer to the other party’s motion.

37th JUDICIAL CIRCUIT COURT FAMILY DIVISION

ORDER REGARDING PAYMENT PLAN AND DISCHARGE OF ARREARAGE

If you have had a hearing on your Motion for Payment Plan and Discharge of Arrearage, the referee will direct that an order be entered through one of the following methods:

- 1. The referee may draft a recommended order.**
- 2. The referee may approve an order prepared by a party and submitted to the referee at the conclusion of the referee hearing.**
- 3. The referee may direct that a party may draft a proposed order and obtain the approval of all parties and submit to the referee within 7 days of the referee's findings (consent order).**
- 4. The referee may direct that within 7 days of the conclusion of the hearing, a party may serve a copy of a proposed recommended order on all other parties with notice that the order will be submitted to the referee for approval if no objection is filed within 7 days.**

Follow the instructions for the method of order entry directed by the referee.

ORDER ENTRY PROCESSES:

I. Referee-Drafted Order:

If the referee tells you that he or she will draft the order, neither party has the responsibility for entry of the order. The referee will complete the order and send it to all parties. Once the proposed order has been mailed to the parties, there is an objection period of 21 days, after which the order becomes a permanent order of the Court. During the objection period, a party may file a Motion to Set Aside Referee's Recommended Order, which will be heard by the assigned Judge. The Friend of the Court has forms and instructions for filing such a motion.

II. Party-Prepared Orders:

If the Court/Referee made a finding and directed that you prepare and notice the order for entry, you must comply with that request. A Court speaks through its written orders. Since you have decided to represent yourself, you may be responsible for preparing the order and presenting it for entry as directed by the Referee. Unless your order is properly entered by the Court, it is not an order even though the Referee's findings are on the record. The order may be entered by the Court through one of the following procedures.

A. At Hearing

If a moving party is prepared to submit an order at the conclusion of the hearing, the referee may approve the order at that time. If the referee approves the order, the referee will submit it as written to all parties as outlined in Section I. above (as a proposed order with interim effect and an objection period). If you are a moving party, you may prepare the Order For Payment Plan and Discharge of Arrearage by following the instructions provided. If you want the referee to approve the order at the conclusion of the hearing, it must be prepared and ready to present.

B. Consent Order

Within 7 days of the date of the referee's findings, a party may draft a proposed order and have it approved by the other party. Once approved by the other party, the Order For Payment Plan and Discharge of Arrearage is a consent order, and may be submitted to the referee for approval. Once approved by the referee, the referee will submit the order as written to all parties as outlined in Section I above (as a proposed order with interim effect).

C. 7-Day Rule [MCR 3.215]

The referee may direct that the moving party prepare and notice the order for entry under the "Referee Seven-Day Rule".

Moving Party – Within 7 days after the conclusion of the referee hearing, the moving party must accurately and completely prepare and serve a copy of a proposed Order For Payment Plan and Discharge of Arrearage on all other parties, along with a notice that the order will be submitted to the referee for approval if there are no objections filed within 7 days of the service of the notice. See the Notice of Entry of Order (FOC54) in this packet. The moving party must then file the original proposed order and a copy for the Friend of the Court with the Circuit Court Clerk, serve a copy on the other party and any attorneys of record, along with the Notice of Entry and proof of service (Certificate of Mailing). Upon receipt, the Circuit Court Clerk will hold the order for the 7-day objection period, and then, if no objections are filed, submit it to the assigned referee for approval and entry by the Court.

Objecting Party – ***Note: An objection to a Notice of Entry of Order may only address accuracy or completeness of the proposed order, i.e. that it does not reflect the referee's findings from the hearing.*** In order to object to the noticed order, the objecting party must file an objection in writing with the Circuit Court Clerk, stating what specifically in the proposed order is contrary to or should be included in the order. An Objection to Entry of Order in this packet may be used for this purpose. The objecting party must also file an alternative proposed order containing what is believed to accurately reflect the referee's findings, and a notice of hearing on the objection. The objecting party must contact the assigned Referee Assistant at (269) 969-6500 to obtain a hearing date for the objection. The hearing will take place on the Referee's motion hearing day/time. Follow the instructions for obtaining a hearing date/time in the instructions for filing a motion contained in this packet.

Objection Hearing – If an objection and notice of hearing was filed, the referee will hold a hearing to review the proposed order and the alternative proposed order, and will approve the order that accurately reflects the findings from the Evidentiary Hearing.

INSTRUCTIONS FOR COMPLETING “ORDER FOR PAYMENT PLAN AND DISCHARGE OF ARREARAGE”

Please print neatly. After filling in the form, you will need to make copies.

Items **A** through **E** must be completed before the order can be presented to the referee for review and for entry by the court. Please read the instructions for each item. Then fill in the correct information for that item on the form.

A Before you fill in the Case Number, review your court papers, get your copy of the Motion for Payment Plan and Discharge of Arrearage and copy the Case Number from those papers onto all 3 pages of this form.

B Also use your court papers to fill in the “Plaintiff” and “Defendant” boxes, and if applicable, the “Third party” box. Copy the names from these court papers onto all 3 pages of this form. For example, if your name is in the box that says “plaintiff, then you should write your name in the “plaintiff” box on this order form.

C Fill in the date of the hearing from which the order results. If there was no hearing (a stipulated order) leave blank.

D If there was a hearing, check the box “after hearing”.

If you and the other party are filling out this order based on an agreement between both of you and you are not filing a motion with the court, check the box “on stipulation of the parties”. If you are filing a stipulated order, you must get approval from the Friend of the Court. (*Note: Even if you and the other party are agreeing to the order, the Court may require a hearing.*)

E Check the box for number 2 only if you filed the Motion for Payment Plan and Discharge of Arrearage. Check the box for number 3 only if the other party filed an Answer to the Motion. Use the following instructions for numbers **4 -11**.

Check only those boxes which say what the referee ordered at the hearing on the motion. Then write in the blank spaces provided what the referee ordered at the hearing. This information must state as closely as possible the exact words of the referee. Use the notes you took at the hearing when filling out this part of the order.

If you did not check number 2, you and the other party are stipulating to the order. This means that you both have agreed on what you want the court to order and have not filed a motion. Since there may not be a hearing, you must write in as much detail as possible exactly what you agree upon. Make sure you include everything you agree upon. Anything that you do not write down on this form will not be ordered, even if you and the other party had agreed on it.

If you filed a motion and the other party has agreed (consented to) the order, both you and the other party must sign the order. If the other party will not sign the order, follow instructions for noticing the order for entry under the “7-day Rule”. If you and the other party are stipulating to the order, you both must sign the order.

Follow all directions for getting your order entered, depending upon the instructions from the Referee at the hearing. See the Order Entry section of this booklet.

You must be sure to read this entire booklet.

**STATE OF MICHIGAN
37TH JUDICIAL CIRCUIT
CALHOUN COUNTY**

**ORDER FOR PAYMENT PLAN AND
DISCHARGE OF ARREARAGE**

CASE NO.

A

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

Court Telephone: (269) 969-6500

B Plaintiff's name, address and telephone no. moving party

Third Party's name, address and telephone no. moving party

v Defendant's name, address, and telephone no. moving party

C Date: _____
Judge: _____
Referee Approval: _____

D 1. This order is after hearing. by stipulation of the

parties.

E THE COURT FINDS:

2. A motion for a payment plan and discharge of arrearage was filed.

3. An answer to the motion was filed.

4. The plaintiff defendant owes past due support of \$ _____ to plaintiff defendant State of Michigan or a political subdivision thereof.

5. The plaintiff/payer defendant/payer does not have the present or near-future ability to pay the arrearage without a payment plan

6. It is appropriate to establish a payment plan

7. Compliance with the payment plan should result in the discharge of the remaining portion of the current support arrearage.

8. The parties have agreed to dismiss past due support owed to the payee. The payee is not acting under fear, coercion or duress, and the support arrearage did not arise from conduct by the payer engaged in exclusively for the purpose of avoiding a support obligation. To the best of the knowledge of the parties, the arrearage to be dismissed is not the subject of a criminal referral or action.

9. The motion should be dismissed in its entirety.

F IT IS ORDERED:

1. The motion for a payment plan and discharge of arrearage is dismissed. The prior orders remain in effect.

2. The plaintiff/payer defendant/payer shall comply with the following payment plan:

For a period of _____ months, payments of \$ _____ per month shall be made by the payer toward the accumulated support arrearage through the MiSDU. These payments must be allocated specifically to the arrearage addressed in this order. If the payer has other cases or obligations, payments shall be made in an amount sufficient to assure monthly payments as ordered toward the specific support arrearage. Upon completion of the payment plan, the payer shall provide notice to interested parties and shall obtain a hearing before the assigned Family Division Referee. At hearing, if it is determined that the payer has completed the payment plan, the court shall enter an order discharging the remaining arrearage. If the payer has substantially completed the payment plan, the court may enter an order granting relief appropriate to the circumstances of the case.

3. Based upon the agreement of the parties, past due support in the amount of \$ _____ owed to the payee is forgiven and credited to any support obligation.

INTERIM EFFECT OF REFEREE'S DECISION

IT IS FURTHER ORDERED that this recommended order shall enter forthwith and the Referee's findings shall be given immediate effect on an interim basis pending judicial hearing. If a motion to set aside Referee's recommended order is filed, this order will remain in effect and must be obeyed unless changed by later order of this Court. This order will become a final order if no motion to set aside the Referee's recommendation is filed with the Clerk of the Court within 21 days of the date of the service of this recommended order or after de novo hearing as the Court may determine.

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

Court Telephone: (269) 969-6500

IT IS SO ORDERED:

Plaintiff (if consent/stipulation)

Defendant (if consent/stipulation)

Date

Circuit Court Family Division Judge

NOTICE OF RIGHT TO REQUEST JUDICIAL HEARING

Either party has the right to request a judicial hearing, within 21 days after date of service, set forth below, by filing a Motion to Set Aside Referee's Recommendation, along with a Notice of Hearing, properly scheduling the matter before the assigned Judge. The party requesting the judicial hearing must serve the motion and notice of hearing on all interested parties and attorneys of record. The original motion and notice of hearing, together with the proof of service, must be filed with the Circuit Court Clerk's Office, Family Division.

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

Authorized Representative

Plaintiff's name, address and telephone no.

Attorney:

v Defendant's name, address, and telephone no.

Attorney:

Hon. _____
Assigned Judge

ASSIGNED REFEREE:

- Norman J. Fryer, Jr., Chief Family Division Referee
- Steven J. Keller, Family Division Referee
- Tina Yost, Family Division Referee
- Phillip Netz, Family Division Referee
- Kristen Getting, Family Division Referee

NOTICE

To: Plaintiff Plaintiff's Attorney
 Defendant Defendant's Attorney

The attached Order for Payment Plan and Discharge of Arrearage

will be submitted to the assigned Family Division Referee for approval and for entry by the Court if there are no objections filed within 7 days of the service of this Notice. (Note: an objection may only address accuracy or completeness of the proposed order.)

Signature of Moving Party

Date

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this Notice of Entry of Order on the Plaintiff
 Plaintiff's Attorney Defendant Defendant's Attorney by mailing by first class mail addressed to their last known addresses as defined in MCR 3.203.

Date

Signature

Plaintiff's name, address and telephone no.

Attorney:

v Defendant's name, address, and telephone no.

Attorney:

HON. _____

Assigned Judge

- ASSIGNED REFEREE:
- Norman J. Fryer, Jr., Chief Family Division Referee
 - Steven J Keller, Family Division Referee
 - Tina Yost, Family Division Referee
 - Phillip Netz, Family Division Referee
 - Kristen Getting, Family Division Referee

OBJECTION

To: Plaintiff Plaintiff's Attorney Defendant Defendant's Attorney
 Objection is filed to the entry of an Order for Payment Plan and Discharge of Arrearage which was
 noticed for entry by the Plaintiff Plaintiff's Attorney Defendant Defendant's Attorney on

Date

The Order as noticed is inaccurate or incomplete as follows: (Attach a separate sheet if necessary)

Attached is an alternate order, which accurately reflects the findings of the Family Division Referee.

NOTICE OF HEARING

A hearing shall be held before the assigned Family Division Referee on _____(date)
 at _____ am/pm in Hearing Room _____, Justice Center, Battle Creek, Michigan.

Signature of Objecting Party

Date

PROOF OF SERVICE

- I certify that on this date I personally served a copy of this Objection on the other party
- I certify that on this date I served a copy of this notice on the other party by mailing a copy by first class mail to the above address.

Date

Signature