

37th JUDICIAL CIRCUIT COURT
FAMILY DIVISION
Friend of the Court

Motion for Modification of
Custody, Parenting Time and Child Support Orders

Forms and Instructions

Motion for Modification of Custody, Parenting Time and Child Support Orders

If you are considering filing your own motion to request a change in your court order regarding custody, parenting time and/or support, please read the following:

- You are representing yourself, however, you will be held to the same standard of proof as an attorney.
- You must properly fill out and complete the motion form.
- You must obtain a motion 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 present your case before the referee.

Information regarding procedures for filing, serving and obtaining an order are contained within these instructions. Further information is available at the Calhoun County Family Division Web Site:

www.calhouncountymi.gov/foc

Legal Standards for Modifying Custody

In making a decision regarding the custody of a child, the Court must consider each of the 12 factors in the Child Custody Act of 1970. A party seeking a change in custody must first establish **proper cause** or a **change in circumstances** before the court will conduct an evidentiary hearing regarding custody.

Proper cause means one or more appropriate grounds that have or could have a **significant** effect on the child's life to the extent that a re-evaluation of the child's custodial situation should be undertaken. Not just *any* fact relevant to the twelve custody factors will constitute proper cause. Rather, the reasons presented must be of a magnitude to have a significant effect on the child's well-being.

A change of circumstances may be found if, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child's well-being, have materially changed. Not just any change will suffice. Over time, there will always be some changes in a child's environment, behavior and well-being. The evidence must demonstrate something more than the normal changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on your child(ren).

Child Support

If the Court finds that a change in custody should occur as the result of your Motion Regarding Custody, it is required to use the Michigan Child Support Formula to set the child support obligation. You may need to present evidence of your income to the court. Access to the Child Support Formula is available through the local library, and on the State Court Administrative Office web site:

<http://courts.michigan.gov/administration/scao/officesprograms/foc/pages/child-support-formula.aspx>

Motion for Modification of Custody, Parenting Time and Child Support Orders

Use this form if:

- you are a party who has an order of custody through a judgment of custody (DC), divorce or separate maintenance (DM), family support order (DS), other family matter case (DZ), an order of filiation (DP), or an eligible case under the Uniform Interstate Family Support Act or the Uniform Child Custody Jurisdiction and Enforcement Act with a suffix of DU, UE or UM.

You CANNOT use this form:

- to start a new custody case; or
- if you are not a party and want to intervene to get custody of the child(ren) in a case for custody, divorce, separate maintenance, family support, or paternity.

By filling in this form and using the instructions, you are representing yourself in a court action regarding custody. To allow the court to consider your request, you must follow the instructions. 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 and costs and attorney fees ordered for you to pay to the other party or to the court.

You will need to use your court papers from your case to fill out this Motion form. If you do not have a copy of your court order, you may obtain one from the Circuit Court Clerk.

After you fill out this motion form, you must file it with the court and serve it on the other party. Then you will need to attend the hearing. Read the instructions carefully. It is recommended that you use the checklist following the motion forms in this booklet to make sure you've done everything properly.

NOTE: Do not use these forms/instructions to request permission to **change the domicile** of a minor child or to request permission to **change your residence** pursuant to section 11 of the child custody act. Forms are available at the Friend of the Court office, on the website, and through the SCAO website for those purposes. Websites listed below.

<http://courts.michigan.gov/Administration/SCAO/Forms/Pages/Domestic-Relations.aspx>

www.calhouncountymi.gov/foc

Instructions for Filing a Motion for Modification of Custody, Parenting Time and Child Support Orders

1. Fill out the Motion and Certificate of Mailing form.

Use the instructions provided on the next page.

2. Obtain a Hearing Date and Time.

Before filling out the "Notice of Hearing" part of the form, contact the assigned Referee Assistant (269-969-6500) to obtain a hearing date far enough in advance to give proper notice to the other party. 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 hearing. If you are going to serve the other party by mail, it must be mailed at least 9 days prior to the hearing. Complete the "Notice of Hearing" section with the:

- date
- location of hearing
- name of the Referee who will be hearing your motion

PLEASE NOTE: The Referee Assistants will ensure that your matter will be properly set before the assigned referee on his or her first available date. Because the Assistants are often in court, you may need to leave a message. Please be sure to leave your name, phone number, case name, and case number so the Referee Assistant can answer your questions. Your call will be returned no later than the close of business the next day.

3. Make copies.

Make at least 3 copies of all pages of your Motion after you have filled it out.

4. File the Motion form with the Circuit Court Clerk.

Take the original and 3 copies of the Motion to the Circuit Court Clerk. You will be required to pay a \$20.00 filing fee AND a judgment fee, which is currently \$80.00 for custody motions.

Include the name of the assigned Judge and Referee on your motion. The Circuit Court Clerk's office will provide it to you if you do not have it. The Clerk will keep the original Motion and one copy. The Clerk will return the remaining 2 copies to you.

- Keep one copy of the Motion for your records
- Serve one copy of the Motion and Notice of Hearing on the other party

5. Serving the Other Party

The other party must be served with the Motion and Hearing date 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. **Pursuant to the Michigan Court Rules (MCR 3.203), you must mail the Motion to the "legal address" on file with the Friend of the Court.** If you do not know the legal address, request it from the Friend of the Court. You may also send the Motion to a different address if you believe that the FOC address is not correct.

6. Complete and file the Certificate of Mailing.

Complete the Certificate of Mailing once you have mailed the Motion to the other party. Make three copies. File the original and one copy of the Certificate of Mailing with the Court Clerk. Keep one copy for your records. Mail one copy to the other party.

Instructions for Using the Motion for Modification of Custody, Parenting Time and Child Support Orders

Please print neatly. After filling in the form, you will need to make at least 3 copies. Items **A** through **J** must be completed before your motion can be filed with the court. Please read the instruction for each item.

- A Case Number.** Obtain your court papers from your case and copy the case number from those court papers onto this form.
- B Plaintiff and Defendant.** Refer to your court papers to fill in the "Plaintiff" and "Defendant" boxes and, if applicable, the "Intervening Party" box. 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". Check the box "moving party" in the same box as your name.
- C Prior Order.** *Check only one box.* If you have a judgment or order in your case, read it carefully to find out if there is any information in it about custody. If there is information about custody, check box **a** and write in the date of the most recent order on the line provided. If there is no information about custody, check box **b** and skip to item **E**.
- D Current Order.** Write the names of the children, and indicate how legal and physical custody is set forth in the last court order.
- E Current Living Situation.** State who the child(ren) are living with now, the address or location where the child(ren) are living, and the date the child(ren) started living there, even if it is different than what was ordered.
- F Change in Circumstance or Proper Cause.** State the significant changes or reasons that require a review and modification of the custody order. **Explain** in as much **detail** as possible what has happened since the entry of the last custody order. If you need more space, use a separate sheet of paper and check the box "see attached page".
- G Requested Custody.** Explain what you want in the new court order. If you need more space, use a separate sheet of paper, and check the box "see attached page". You need to include information about child support and parenting time. Attach copies of all extra sheets to each copy of your Motion.
- H Sign and Date.** Fill in the date that you complete the Motion and sign your name. Contact the assigned Referee Assistant (969-6500) to obtain a hearing date.
- I Notice of Hearing.** Once you have a motion hearing scheduled, fill in the full name of the assigned Family Division Referee who will be hearing the 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. File the Motion and all attachments. See previous instructions for filing and service.
- J Certificate of Mailing.** On the day that you serve your Motion on the other party, write in the date and sign your name on the Proof of Service/Certificate of Mailing. Return the original Certificate of Mailing to the Circuit Court Clerk with one copy. Keep one copy for your records.

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

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

Assigned Judge: Hon. _____

Assigned Referee: _____

C 1. a. On _____ a judgment or order was entered regarding custody.
date
 b. There is no current order for custody.

D 2. The current custody orders are as follows:
 Name(s) of child(ren):

- 1) _____ **see additional sheet**
- 2) _____
- 3) _____

- | | | | |
|----------------------------------------------------|------------------------------------|------------------------------------|--------------------------------------------|
| <input type="checkbox"/> joint legal custody to | <input type="checkbox"/> plaintiff | <input type="checkbox"/> defendant | <input type="checkbox"/> Intervening Party |
| <input type="checkbox"/> joint physical custody to | <input type="checkbox"/> plaintiff | <input type="checkbox"/> defendant | <input type="checkbox"/> Intervening Party |
| <input type="checkbox"/> sole legal custody to | <input type="checkbox"/> plaintiff | <input type="checkbox"/> defendant | <input type="checkbox"/> Intervening Party |
| <input type="checkbox"/> sole physical custody to | <input type="checkbox"/> plaintiff | <input type="checkbox"/> defendant | <input type="checkbox"/> Intervening Party |

E 3. The children have been living with _____ at _____
 _____ since _____.
Complete address date

F 4. Circumstances have changed or Proper Cause exists that require a change in custody:
 see attached page. (Use a separate sheet to explain in detail what has happened and attach to this motion.)

STATE OF MICHIGAN 37 TH JUDICIAL CIRCUIT CALHOUN COUNTY	MOTION TO MODIFY CUSTODY PARENTING TIME AND CHILD SUPPORT	CASE NO. A
--------------------------------------------------------------------------	-----------------------------------------------------------------------	----------------------

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

Court Telephone: (269) 969-6500

G 5. I ask the court to order custody and parenting time as follows:
Use a separate sheet to explain in detail what you want the court to order, and attach to this motion. see attached page

Further, I ask that child support be set consistent with the Michigan Child Support Formula.

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

H _____
Date

Moving Party's Signature

NOTICE OF HEARING

A hearing will be held on this motion before _____ on _____
Name of Referee Date
I at _____ in hearing room # _____, Justice Center, 161 E. Michigan Ave., Battle Creek, MI
Time

NOTE: If you are the person receiving this Motion, you may file an Answer. Please see the website for an Answer Form. www.calhouncountymi.gov/foc

STATE OF MICHIGAN 37 TH JUDICIAL CIRCUIT CALHOUN COUNTY	MOTION TO MODIFY CUSTODY PARENTING TIME AND CHILD SUPPORT	CASE NO. A
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Court Address: 161 E. Michigan Ave., Battle Creek, MI 49014

Court Telephone: (269) 969-6500

ATTACHMENT TO MOTION

2. Continued from page 1

Name(s) of child(ren):

4) _____

5) _____

6) _____

4. Continued from page 1

5. Continued from page 1

STATE OF MICHIGAN 37TH JUDICIAL CIRCUIT CALHOUN COUNTY	MOTION TO MODIFY CUSTODY PARENTING TIME AND CHILD SUPPORT	CASE NO. A
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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 **v** Defendant's name, address, and telephone no. moving party

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

Assigned Judge: Hon. _____

Assigned Referee: _____

CERTIFICATE OF MAILING

I CERTIFY THAT ON THIS DATE I MAILED A COPY OF THIS MOTION, NOTICE OF HEARING AND CERTIFICATE OF MAILING TO THE OTHER PARTY OR PARTIES BY ORDINARY MAIL TO THE ABOVE ADDRESS(ES).

J _____
Date

Moving Party's Signature

MOTION TO MODIFY CUSTODY, PARENTING TIME AND CHILD SUPPORT - CHECKLIST

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

DID YOU . . .

1. Fill out and complete all necessary information on the Motion form? YES
2. Make all necessary copies? YES
3. File the motion with the Clerk of the Court? At that time you will need to pay both the motion fee and judgment fee to the Clerk of the Court. YES
5. Serve a copy of the motion on the other party and on any other custodian/guardian? YES
6. File a proof of service/Certificate of Mailing with the Clerk of the Court? YES
7. Keep one copy of the motion and notice of hearing form for yourself? 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 you may be assessed court costs and attorney fees.

By using this form packet you are representing yourself in a court action regarding custody, parenting time and child support. To allow the court the ability to consider your request, you must follow the instructions in this packet

Note: If the court considers a change in custody, it must also consider a change in the support obligation. The court is required to use the Michigan Child Support Formula in deciding the appropriate amount of support, unless the court finds that using the Formula would be unjust or inappropriate. In order to make a support determination, the court will need the income or earning capacity of each of the children's parents, if they are parties to the underlying court action.