37th JUDICIAL CIRCUIT COURT
FAMILY DIVISION
Friend of the Court

Motion for Change of Domicile/ Legal Residence

Forms and Instructions

2013 Edition

Form FOC 115

MOTION REGARDING CHANGE OF DOMICILE/LEGAL RESIDENCE

Use this form if:

- you have a case for divorce, separate maintenance, family support, custody, or paternity; or
- you have a judgment of divorce or separate maintenance, a family support order, custody order, or an order of filiation that restricts you from changing the legal residence or domicile of your minor child(ren);
- **and** you want the court to allow a change in legal residence or domicile.

MOTION CHECKLIST

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 all necessary copies? YES ☐
3. Pay the fee(s) to the clerk? YES ☐
4. Mail (serve) a copy of the motion on the other party and on any other custodian/guardian after the judge and hearing date were assigned to your case by the clerk? YES ☐
5. Return to the clerk's office **after** you mailed the motion and notice of hearing to the other party and completed the certificate of mailing? YES ☐
6. Keep one copy of the motion and notice of hearing form for yourself? YES ☐
7. Give two copies of the completed form to the clerk of the court? YES ☐

If you cannot answer "yes" to all the above steps, a hearing on your motion may be delayed or your motion may be dismissed.

By using this form packet you are representing yourself in a court action regarding change in domicile or legal residence. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the order you get from the court may not give you the authority you want.

NOTE: Under the Michigan Child Support Formula, a change in domicile or legal residence may affect parenting time and the amount of child support that is ordered. The court is required to use the Michigan Child Support Formula unless the court finds that using the Formula would be unjust or inappropriate. If the court orders a change in child support, it may direct that a party prepare the Uniform Child Support Order.

If you have any questions about the steps in the process, refer to pages 3 through 5 of this booklet for details.

INSTRUCTIONS FOR USING FORM FOC 115
FILING A MOTION AND SERVING A MOTION

»» FILING A MOTION

1. Fill out the Motion form.

Use the instructions on page 6. Be careful not to make mistakes.

Before filling out the "Notice of Hearing" part of the form, contact the friend of the court office to find out whom to contact about getting a hearing date. Then contact the person or office as directed by the friend of the court office. Fill in the form with the information you get about the hearing date, location of hearing, and name of the referee who will be hearing the motion.

Make at least five copies of the form after you have filled it out.

2. File the Motion form with the circuit court clerk.

Take the original and five copies of the form to the circuit court clerk in the county where your case is located.

You must pay a $20.00 motion fee. If you ask to modify a parenting-time order, you may also be required to pay an $80.00 judgment and order entry fee when the motion is filed. If you can't afford to pay the fee(s), ask the county clerk for an Affidavit and Order, Suspension of Fees/ Costs (form MC 20 <u>not included in this packet</u>) to fill out.

The circuit court clerk will write the name of the judge assigned to your case on your form. The clerk will keep the original and one copy of the motion and any attachments for the court file and the friend of the court. Then the clerk will return four copies and remaining attachments to you. Do not lose them.

What you should have when you leave the clerk's office:

One copy of FOC 115 (with any attachments) - for you
One copy of FOC 115 (with any attachments) - for the other party
One copy of FOC 115 - for proof of service to the court
One copy of FOC 115 - for proof of service to the friend of the court

»» SERVING THE MOTION ON THE OTHER PARTY OR PARTIES

1. Serve the Motion and Notice of Hearing 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 (notified of) the motion and hearing date at least <u>9 days</u> before the hearing date.

NOTE: Serve the papers by mailing them to the other party by first-class mail.

What you need for service:

One copy of FOC 115 (with any attachments) - for the other party
Two copies of FOC 115 - for proof of service
Any additional copies of FOC 115 (with any attachments) - for other custodian or guardian if there is someone other than the other parent who has care or custody of the child(ren).

Mail one copy with attachments to the other party. If there is a custodian or guardian, mail one copy and the attachments to him/her. Then fill out the Certificate of Mailing on the front of the remaining three copies. Keep one copy for your own records.

2. **Return to the circuit court clerk.**

   Once you have mailed the motion and notice of hearing and filled out the Certificate of Mailing on the remaining three copies, return to the clerk's office with two copies. Remember to keep one copy for your own records. The clerk will deliver one copy to the friend of the court.

3. **Response from other party.**

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

4. **Attend the hearing.**

   You must attend the hearing on the motion.

»» INFORMATION ABOUT ATTENDING THE HEARING

Bring all supporting papers you have and any witnesses who are willing to testify.

1. Because you are representing yourself, you are expected to conduct yourself as an attorney would and to follow the same general rules an attorney would.

2. Make a list of information you think is important for the referee to know. The information should relate to the reasons stated in your motion. You can use this list as a reminder to bring up the points you think are important.

3. If you think you need to order (subpoena)someone to attend this hearing, follow the procedure in Michigan Court Rule 2.506 or consult with an attorney.

4. Go to the referee's hearing room on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Be prepared to spend most of the morning or afternoon in court. Bring any witnesses with you.

5. Go into the referee hearing room and tell the referee your name, that you are there for a hearing, and that you are representing yourself. Do not interrupt any hearing in progress. Then take a seat in the back of the courtroom and wait for your case to be called.

6. When your case is called, be prepared to state:

1) your name.

2) that you are representing yourself.

3) that you need an order allowing you to change domicile or legal residence of your minor child(ren).

4) the facts or reasons for your request **(bring papers that support your facts or reasons)**.

5) why you believe this order would be in the best interests of the child(ren).

6) the number of overnights that the child(ren) will be spending each year with each of the parties, should your request be allowed.

Answer the referee's questions clearly and directly. If the referee wants to hear from the other witnesses, ask them to tell the court what they saw or know regarding your situation.

7. 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 will have another chance to talk. Taking notes will help you with this.

NOTE: If your hearing was held before a referee and you do not agree with the referee's decision, you have 21 days from the date you receive the referee's recommendation to file an objection and request a de novo hearing before the judge. Use the packet for Motion to Set Aside Referee's Recommendation.

INSTRUCTIONS FOR COMPLETING "MOTION REGARDING CHANGE OF DOMICILE/LEGAL RESIDENCE"

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

Items A through H 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 for divorce, separate maintenance, family support, or paternity and copy the Case No. from those court papers onto 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 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 both names where they belong, you must check the box "moving party" in the same box as your name.

C Enter the date of the most recent order regarding custody.

D You need to explain why you think it is in the best interests of the child(ren) for the court to order this request. Use a separate sheet of paper and print your explanation as neatly as you can. You will need four copies of this sheet to attach to copies of this form. If you checked the box in item 1 that you have sole legal custody, you must explain why it is in the best interests to move. If you have joint legal custody, you must explain how each of the factors applies to your family situation. See MCL 722.31 for the factors allowing you to move.

E For items 4 and 5, you need to **explain in** as much **detail** as possible what you want the court to order. Use a separate sheet of paper and print as neatly as you can. You will need four copies of this sheet to attach to copies of this form.

F Write in today's date and sign your name. Now contact the the friend of the court office in your county to find out how to get a hearing date. See page 3 of this booklet for details.

G Once you get a hearing scheduled, fill in the full name of the 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 place of the hearing.

Now go to the circuit court clerk's office with the original and five copies of this form and the four copies of each separate sheet. The clerk will attach one copy of each separate sheet to four of the copies. The clerk will return four copies to you.

Read page 3 of this booklet for details on mailing this form to the other party.

H On the date you mail one copy (and the separate sheets) to the other party, write in the date and sign your name on the remaining three copies.

Return to the clerk with two copies. Read page 4 of this booklet for details.

You must read this booklet for directions on the legal process.

Approved, SCAO

Original - Court
1st copy - Other party
2nd copy - Moving party

3rd copy - Friend of the court
4th copy - Proof of service
5th copy - Proof of service

STATE OF MICHIGAN 37th JUDICIAL CIRCUIT CALHOUN COUNTY	MOTION REGARDING CHANGE OF DOMICILE/LEGAL RESIDENCE	(A) CASE NO.

Court address
161 East Michigan Avenue, Battle Creek MI 49014

Court telephone no.
(269) 969-6500

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

v

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

Third party name, address, and telephone no. ☐ moving party

(C) 1. On _____ a judgment
Date

or order was entered regarding custody.

2. Legal custody is ☐ joint.
☐ sole with the ☐ plaintiff. ☐ defendant.

(D) 3. It is in the best interests of the child(ren) to permit a change in the legal residence or the domicile of the following child(ren) because: Use a separate sheet to explain in detail why it is in the best interests of the child(ren) and attach. Include all necessary facts. Name each child for whom you want this change.

(E) 4. **I ask** the court to enter an order allowing a change of domicile or legal residence.
Use a separate sheet to explain in detail what you want the court to order and attach.

(F) 5. **I ask** the court to enter an order ☐ continuing the current parenting-time order. ☐ modifying the parenting-time order as follows: Use a separate sheet to explain in detail what you want the court to order and attach.

_____ Date

_____ Moving party's signature

NOTICE OF HEARING

(G) A hearing will be held on this motion before _____
Referee

on _____ Date at _____ Time in _____
Hearing room, 161 E. Michigan Ave., Battle Creek MI 49014

If you require special accommodations to use the court because of a disability, or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements. When contacting the court, provide your case number(s).

NOTE: If you are the person receiving this motion, you may file a response. Contact the friend of the court office and request form FOC 116.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this motion and notice of hearing on the parties or their attorney by first-class mail addressed to their last-known addresses as defined in MCR 3.203.

(H) _____ Date

_____ Moving party's signature

MCL 552.505, MCL 722.31, MCR 2.119, MCR 3.211(E)