

Filing for DIVORCE

— General Information —

The set you have purchased should contain the following forms, **many of which may not be needed** for your particular case.

Item number & Form #	Form title		
1. MC01	Summons and Complaint	15. CC381	Notice of Hearing on Motion for Personal Protection Order
2. CC415	Complaint for Divorce, page 1	16. P-02	Instructions for Personal Protection Orders
3. CC427a	Judgment of Divorce, page 1	17. MC416	Uniform Child Custody Jurisdiction Act Affidavit
4. CC427b	Judgment of Divorce, page 2	18. FOC10/52-1	Uniform Child Support Order, Page 1
5. CC427c	Judgment of Divorce, final page	19. FOC10/52-2	Uniform Child Support Order, Page 2
6. DCH-0838	Record of Divorce or Annulment	20. FOC10/52a-1	Uniform Child Support Order (No FOC Services) Pg. 1
7. CC429	Notice of Hearing	21. FOC10/52a-2	Uniform Child Support Order (No FOC Services) Pg.2
8. MC07	Default Application, Entry Affidavit	22. FOC89	Order Regarding Custody & Parenting Time
9. CC428	Default Application and Non military Affidavit and Entry (Domestic Relations)	23. FOC100-1	Domestic Relationship Judgment Information, Pg. 1
10. MC20	Affidavit and Order for Suspension of Fees	24. FOC100-2	Domestic Relationship Judgment Information, Pg. 2
11. CC419	Notice of Hearing & Motion for Mutual Temp. Restrain. Order Conserv. Property	25. MC427	Ex-Parte Interim Order
12. CC420	Mutual Temporary Restraining Order Conserving Property	26. FOC5	Order Regarding Income Withholding
13. CC375	Motion for Personal Protection Order	27. FOC23	Verified Statement and Application for IV-D Services
14. CC376	Personal Protection Order	28. FOC10b-1	Uniform Spousal Support Order, Page 1
		29. FOC10b-2	Uniform Spousal Support Order, Page 2
		30. FOC10c-1	Uniform Spousal Support Order, No FOC Services, Page 1
		31. FOC10c-2	Uniform Spousal Support Order, No FOC Services, Page 2

A message from TARGET INFORMATION MANAGEMENT

These brief instructions on this page are only intended to help you choose which of the forms you will need. If you need help filling in the forms, seek help from a paralegal, legal assistant, or from legal aid, all of which can be found in the phone book or yellow pages. You may also ask the clerk of the circuit court some questions (see **NOTE**).

1. Everyone will need items 1 – 6.
2. Some courts may request item 7, ask the clerk where you file for your divorce.
3. If the defendant (the person you are divorcing) will not be present at the hearing, you will need a default form. There are two versions, items 8 and 9. We recommend item 9 (CC428) but the clerk in your circuit court may prefer item 8; ask the clerk.
4. Item 10 is used if you can't afford the court's fee for filing for divorce.
5. Items 11 – 16 are needed only if you need to get a restraining order or a personal protection order, should things get "ugly" after you file for divorce. Items 11 & 12 are for restraining someone from taking or disposing of jointly owned property. Items 13 – 15 are for protection from personal abuse and item 16 is an instruction book for items 13 – 15.
6. Items 17 – 27 are only used when children are involved and even then not all will be needed. Ask the court clerk which ones they use.
7. Items 28 – 31 are only used if spousal support is requested and you use only FOC 10b or FOC10c, not both.

Inside this pamphlet is general information about the court and the Friend of the Court which you may find helpful especially if children are involved. The text inside refers to "visitation", which the courts now call "parenting time".

How to Begin

You file for divorce in the circuit court in the county where you live. Fill in just items 1 and 2 (and item 10 if you cannot afford to pay the filing fee.) You are the plaintiff. The person you are divorcing is the defendant. If you are unsure about an item leave it blank. Type or print – your writing must be legible.

Most of the other forms, if used, are used later in the process, most at the hearing before the judge, but take them all with you to file for divorce as some may be needed depending on the court or your circumstances. The court clerk can help you but please read the following note!

NOTE: The circuit court clerk is not allowed to give legal advice and cannot answer questions that ask "What should I do?" or "How should I do it?" You must rephrase your question to ask "What is typically or normally done in a case like mine?" (They can tell you what everyone else does — a matter of public record — but cannot tell you what to do.)

Target tries to keep these forms current, complete and acceptable to every circuit court in Michigan. If your local court does not accept these, we would like to know about it so please call. Still, we make no warranty that the forms will actually be acceptable in any specific court or that you will have all forms required in any specific court. The user of these forms, by using the forms, assumes whole and sole responsibility for insuring that the forms are appropriate for the user's purpose. Target assumes no responsibility for the use or misuse of these forms, or for any consequences of their use. Target's sole warranty is that the forms are free from physical construction defects. We do not warrant that the verbiage or language used is current, correct or appropriate for any use.

whatsoever.

*The following are excerpts from Ingham County's
Friend of the Court Handbook*

Procedures of the Court

Procedures of the Court

Any individual wishing to start a domestic relations action must file the correct papers according to specific rules (Michigan Court Rules). There may be many complicated issues or rules involved in a domestic relations case. Although the court cannot require a party to use an attorney to start or defend an action, it may be advisable to have an attorney file the correct papers and follow specific rules.

Plaintiff's Complaint

Every domestic relations matter begins with the plaintiff filing a complaint or petition which asks the court to grant an order. For example, a complaint may ask the court to grant a divorce, provide for child or spousal support, start an out-of-state support collection effort, or grant an order for custody of a child. The defendant is the person whom the complaint is filed against.

Service

The court rules provide that the defendant be served with a copy of the complaint and summons. The summons is a document which legally asks the person complained against to answer the complaint. This must be delivered to that person in such a way as to give them notice of the action against them.

The most typical ways to give notice are for a third party to personally hand the papers to the defendant or by sending them as required by Michigan Court Rule.

Defendant's Answer to Complaint

If the person served does not file an answer to the complaint within the time permitted by Michigan Court Rule, (21 days or as shown on the summons, form # MC01) they may lose the right to have their concerns heard by the court.

This could result in the court entering an order giving the Plaintiff everything he or she requested in the complaint.

Domestic Relations Process

DIVORCE

A person wanting to end his or her marriage must have a circuit court enter an order ending the marriage. To grant the divorce, the court must find that there has been a breakdown in the marriage relationship to the extent that the parties cannot live together as husband and wife. At least one of the parties must appear in court to show that this breakdown really does exist. In Michigan, a divorce can be granted even if one of the parties does not want the divorce.

A divorce ends the legal relationship between a husband and wife. The divorce does not end the family relationship, even though the relationship will change.

Many decisions must be made before a divorce is granted. These decisions may include:

1. Who will make decisions, provide daily guidance and take care of the children? (custody)
2. What contact will children have with a parent they don't live with? (visitation)
3. How should the property gathered during the marriage be divided? (property settlement)
4. How will financial responsibilities for the children be divided? (child support)

5. What amount, if any, should one party contribute towards the support of the other, either permanently or temporarily? (spousal support—alimony)
6. How will the children's medical, dental and other health care expenses be paid? (health care coverage)
7. Will the wife take back her maiden name? (restoration of maiden name)
8. Will children be allowed to move from the State of Michigan? (domicile)

Divorce issues may be resolved in the following ways:

1. The parties may be able to reach an agreement by themselves or by talking to their attorneys.
2. Mediation is available through the Friend of the Court and private agencies to resolve the issues of custody and visitation.
3. In some counties, a Friend of the Court referee may hear the issues and make a recommendation to the judge.
4. The judge may help in settling a matter by having a pretrial or settlement conference.
5. The judge will hold a hearing or trial on the issues that have not been resolved.

Copies of all papers filed in a case must be given to the Friend of the Court by the person bringing the action or his or her attorney. Recommendations on custody, visitation and child support will be made by the Friend of the Court office, if the circuit court orders the office to do so.

Ex-Parte Interim Orders (Orders entered by the court without the benefit of a hearing)

In some cases a court may immediately enter a child support order upon the request of a plaintiff or defendant.

The party directed by the court to make payments may request the court to hold a hearing to change its ex-parte interim order by filing a motion within 14 days after they receive the order. If a motion is not filed within 14 days, the order automatically becomes a temporary order.

Temporary Orders

After the complaint has been filed, matters such as temporary custody, visitation and amount of support, and in some cases, spousal support, need to be decided. Either party, or in some cases the Friend of the Court, may file a motion with the court asking for appropriate orders. If a hearing before a referee or judge is scheduled, both parties will be notified of the time and place. On that date, they can present their position to the court. The decision made at that hearing by the court is written down by one of the attorneys. This is given to the judge for entry (signing the order), and made an order of the court.

NOTE: Only a judge can enter orders or judgments; a referee can hear motions, but can only propose recommended orders to the judge (See referee section — page 7).

Reconciliations and Dismissals

Not every divorce matter that is started ends in a divorce. If the parties are attempting to work out their differences and wish to have enforcement of their court orders suspended, they must provide the court and the Friend of the Court with written notice of their RECONCILIATION. A reconciliation notice does not dismiss a divorce action.

If the parties have resolved their differences and wish to stop the divorce action, they must file a Voluntary Dismissal (form # MC09) with the circuit court and provide a copy to the Friend of the Court.

In either situation, if children have received public assistance, plans to pay any back child support must be made with the Friend of the Court.

Judgment

A judgment contains the orders of the court which address support, visitation, custody, property and other related issues.

There is a 60 day waiting period for divorce cases without children and a 6 month waiting period for divorces where there are minor children.

After the waiting period is over the judge may grant a divorce. Some of the sections in the divorce judgment can be changed by the judge after it has been entered (See modification of judgment — below). Once a judgment has been entered, parties must comply with its terms.

If a party is dissatisfied with the judgment, he or she may wish to contact an attorney. Once an order has been entered, a party has 21 days in which to file an appeal.

Modification of a Judgment

After a judgment has been entered in a divorce action, there are some orders that can be modified (changed). These could include: custody, visitation, support, and change of domicile. A change can only occur if: (1) both parties have signed an agreement (stipulation and consent agreement) which, if approved by the court will be entered as an order; OR (2) a motion has been filed, a hearing has been held and the court enters an order granting a change.

The Friend of the Court has a responsibility to petition the court in certain circumstances for child support and visitation modification (see child support section — page 4 and visitation sections — page 5).

FAMILY SUPPORT ACTIONS

A party who is separated from his or her spouse with no divorce pending and who has a minor child living with them, may seek to establish a family support order under the Family Support Act (this is referred to as an Order of Support). Generally, family support actions are started by a Prosecuting Attorney's office after a referral by the Michigan Department of Social Services. The Department of Social Services makes referrals whether or not a party receives public assistance. In addition, a party can contact a private attorney to file an action.

The Friend of the Court has the responsibility to enforce all orders of support. If the parents get back together and decide to end the family support order, they must contact either the Prosecuting Attorney or their attorney to obtain an Order of Dismissal. Notifying a Department of Social Services caseworker does not end the court's support order.

When the Friend of the Court receives the Order of Dismissal, the family support order will stop. If children have received public assistance, plans to pay any back support must be made with the Friend of the Court.

Either parent may begin a divorce action even though the court has ordered support in a family support action. The family support order ends upon entry of a Judgment of Divorce. A copy of the Judgment of Divorce must be provided to the Friend of the Court. If delinquent support is owed under the family support action, plans to pay the back support must be made with the Friend of the Court.

If the parties have a family support order and have also filed for divorce, and decide to stop the divorce action, they must file an Order of Dismissal. Filing an order to dismiss the divorce will not end the family support order.

PATERNITY ACTIONS

Paternity is a legal determination that identifies the father of a child born out of wedlock.

Either parent can request the court to establish paternity.

Generally, paternity actions are started by a Prosecuting Attorney's office after a referral by the Michigan Department of Social Services.

The Department of Social Services makes referrals whether or not a party receives public assistance. A party has the right to contact a private attorney to file the paternity action.

Once paternity has been established, the court may order child support, reimbursement of medical expenses for the birth of the child and on-going health care expenses of the child.

Visitation (provision for the father or mother to see the child) is not automatically ordered in paternity cases. However, if a parent who has a paternity action pending would like custody or visitation, he or she should advise the Prosecuting Attorney or their private attorney before the entry of the paternity order.

The Friend of the Court cannot help with visitation problems unless a court order for visitation has been established by the court.

If the mother and father marry after the court enters the paternity order, they must give a copy of the marriage license to the Friend of the Court to end the support order. Arrangements must be made to pay all money owed to any public agency.

INTERSTATE ACTIONS

If the parent required to pay support leaves the State of Michigan, he or she must continue to pay support through the Friend of the Court.

If the child support payments stop, the parent receiving support has two choices:

(A) Contact either the Prosecuting Attorney after referral from Department of Social Services (see above), or a private attorney to request that they file a Revised Uniform Reciprocal Enforcement of Support Act (RURESA) action. A RURESA order establishes a support order in the state where the non-custodial parent lives.

To begin the RURESA action, the custodial parent should have the full name, date of birth, social security number, the last known address of the person who should be paying support and a copy of all court orders involving the parents. If the custodial parent is not sure where the other parent lives, the Prosecuting Attorney's office will try to locate him or her.

Once the state in which the non-custodial parent lives enters its support order, authorities in that state are responsible for its enforcement.

Each state has control within its own boundaries. A support order established in another state under RURESA does not affect the amount owed under a Michigan order. A delinquent payer who returns to Michigan can be brought before the court for failure to pay under the Michigan order;

(B) Register the Michigan order in the state where the paying parent lives. The Friend of the Court or a private attorney can assist with this process.

After the Michigan order is registered in the state where the paying parent lives, it becomes an order of the court in the other state, to be enforced by the other state.

In some states, registering the order includes registering the custody and visitation orders. This means the court in the other state could change the visitation, custody and/or support order if asked.

Rights and Responsibilities of the Parties

Each party has the right to:

1. Expect the Friend of the Court to perform the duties listed in this pamphlet.
2. Request the Friend of the Court office to explain its procedures.
3. Be treated with courtesy by Friend of the Court employees.
4. File a grievance with the Friend of the Court office concerning an employee or office procedure.

5. Consult an attorney regarding concerns.

Each party has the responsibility to:

1. Inform the Friend of the Court, in writing, of changes which affect the way the Friend of the Court must do its job, such as:
 - (a) Change of address;
 - (b) Change in income status or source of income;
 - (c) Changes in children's residence.
2. Provide information to the Friend of the Court office to assist it in carrying out their duties as required by law.
3. Obey all orders of the court unless and until changed by the court.
4. Keep appointments made with the office, or take the time to cancel an appointment and make a new one.
5. Treat the Friend of the Court employees with courtesy.

Duties of The Friend of the Court

MEDIATION

The Friend of the Court is required by law to make mediation services available to parties when there is a dispute as to custody and/or visitation.

Mediation is a process that parties can use to reach their own agreements without going to court. The law requires that both parties agree to use mediation. The mediator (the neutral person who helps the parties reach an agreement) cannot reveal to the court or anyone else the discussions the parties had during the mediation process. The person who mediates in the case cannot later investigate any disputes between the parties or enforce any court orders regarding the case.

CUSTODY

A custody order specifies with whom the child shall live.

In deciding the custodial arrangements, the court must consider all of the following factors of the Michigan Child Custody Act:

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

Custody Questions and Answers

1. How do I get an order for custody?

A petition requesting the court to grant you custody of your children must be filed with the court. If both parents agree and sign an agreement (stipulation and consent agreement), that agreement, if approved by the court, may be entered as a custody order.

2. How do I change an existing order for custody?

A petition to modify a custody order must be filed with the court, or the parents can sign a written agreement changing custody (stipulation and consent agreement), which if approved by the court, will change custody.

3. Do I need to have an attorney to get custody?

It is not required that you have an attorney to file a petition for custody. However, there are many complicated issues involved in a custody case and therefore you may want to have an attorney represent you. The Friend of the Court cannot file a petition for custody for you.

4. Is there any way the court can assist us in reaching an agreement on custody?

The Friend of the Court is required to provide Domestic Relations Mediation. Mediation is a process where a neutral third party assists in voluntarily settling a custody dispute. Both parties must agree to participate in this process.

5. Are there different kinds of custody?

Yes, a number of custody arrangements are possible. The most common are:

- (1) **Joint Custody.** Joint custody means an order of the court in which one or both of the following are provided:
 - (a) That the children live with one parent part of the time and with the other parent part of the time. (Joint Physical Custody)
 - (b) That the parents both share in making decisions on important issues dealing with the children. (Joint Legal Custody)
 - (2) **Sole Custody.** An order of the court which states that the children live with one parent and that parent is responsible for making decisions on important issues dealing with the child.
6. *After a petition for custody has been filed, and we cannot reach our own agreement, what does the Friend of the Court have to do?*

The Friend of the Court is required to:

- (1) Offer mediation services to the parties.
 - (2) Conduct an investigation and file a written report and recommendation to the court based on the factors listed in the Michigan Child Custody Act.
7. *Do I have the right to receive a copy of the Friend of the Court report and recommendation on custody?*

Before the court takes any action on a Friend of the Court custody recommendation, the Friend of the Court must provide to each party or their attorney a copy of the report, recommendation and any supporting documents or a summary of the documents prepared or used by the Friend of the Court.

8. What will happen if I have an order for custody and the other parent does not return the child to me as stated in the court order?

You have several choices:

- (1) You can contact the Friend of the Court and request that they enforce your order.
- (2) You can contact your attorney.
- (3) You can contact the Prosecuting Attorney and request that a kidnapping charge be started if you have reason to believe that the other parent intends to keep the child.

9. Does The Friend of The Court have a responsibility to

investigate alleged abuse and/or neglect of a child?

Allegations of abuse or neglect should be reported to the Protective Services unit of your local Department of Social Services office.

The Friend of the Court has a responsibility to conduct an investigation when a party files a visitation or custody petition. Allegations of abuse or neglect should be communicated to the Friend of the Court during the investigation process.

Support Orders

A support order means any order entered by the circuit court which requires the payment of support.

Support may include: 1) child support; 2) spousal support; 3) payment of expenses of medical, dental and other health care; 4) child care expenses; and 5) educational expenses.

Support Investigations and Reports

If ordered by the court, the Friend of the Court will conduct a financial investigation and make a written report and recommendation to the parties and the court regarding child support. Friend of the Court reports cannot be used as evidence in court without the agreement of both parties. However, the Friend of the Court investigator may be called to testify about their report and recommendation.

Child Support Guideline

State and Federal law require that a child support guideline be used by Friends of the Court and Prosecuting Attorneys when recommending appropriate child support amounts.

In Michigan, a child support guideline has been developed which considers both the non-custodial and custodial parent's income.

For more information about the child support guidelines currently in use, you may contact either the Friend of the Court or your attorney. A copy of the guideline may be available at your local library.

To obtain a copy of the Michigan Child Support Guidelines, contact:

State Court Administrative Office
Child Support Guideline Manual
P.O.Box 30048
Lansing, MI 48909

Accounting

The Friend of the Court, unless otherwise ordered by the court, has the responsibility to collect and forward child and spousal support to the payee.

State law requires Friends of the Court to receive, record and send out all support payments due, current and past due not less than once each month.

Once a year, upon a written request, the Friend of the Court shall provide parties with a statement of the support account free of charge.

Payments for support may be made by personal check, money order, income withholding or in person at the Friend of the Court office. Cash payments should not be mailed.

Automatic Support Enforcement

The Friend of the Court is required to automatically begin enforcement action against a parent paying support whose back support is in an amount equal to four weeks of support. This is to be done without waiting for a complaint or request for enforcement from the person receiving support.

If both parties want to temporarily stop the Friend of the Court from automatically enforcing the support order, they must file a joint written request with the Friend of the Court. If the custodial parent is

currently receiving public assistance or there is money owed to the Department of Social Services, the parties cannot stop enforcement action.

Enforcement of Support

The Friend of the Court has many options available to enforce support orders. These options include:

1. Income Withholding Orders

Any income withholding order requires the payer's (person required to pay support) employer or other source of income to withhold support from his or her paycheck. All support orders issued in the state of Michigan must provide for an order of income withholding in the event delinquencies occur.

If the payer lives out of state, and gets behind in making his or her support payments, the Friend of the Court may begin an interstate income withholding action.

In order for a Friend of the Court office to start an interstate income withholding action, it must have the following information:

- (A) Name, address and social security number of payer.
- (B) Name and address of payer's employer or other source of income.

2. Show Cause Hearing

If an order for income withholding does not work, the Friend of the Court may begin a civil contempt proceeding by filing a petition with the court for an order to show cause.

If a show cause hearing is held and the payer appears, the judge will decide whether the person is in contempt and what action should be taken.

If the show cause hearing is held and the payer **does not** appear, the judge may issue a bench warrant for the payer's arrest.

Once the court issues a bench warrant, the responsibility for the payer's arrest lies with the local law enforcement agencies.

3. Tax Intercept

If back child support is owed, the Friend of the Court may request an income tax offset.

A tax offset is where any tax refund owed to a payer is sent to the Friend of the Court and applied to back child support.

For more information contact the Friend of the Court.

4. Liens

In some cases, the Friend of the Court may be able to obtain a lien on a payer's property. For more information, contact the Friend of the Court office.

Modifications of a Support Order

The Friend of the Court is required by state law to review child support orders as follows:

1. Not less than once every two years if the children for whom support is being paid are receiving public assistance.
2. When on its own finding or initiative, the Friend of the Court office determines that the amount of the child support order should be changed.
3. Upon a written request from a party, not more than once every two years.

The office must complete its support review within 60 days and make a copy of its recommendations and supporting documents available to the parties or their attorneys.

If the office finds that an increase or decrease is appropriate, the Friend of the Court must petition the court for a change in the child

support amount.

Questions and Answers Regarding Support

1. How do I get an order for support?

A petition requesting the court to grant an order for support must be filed with the court. If both parties agree and sign an agreement (stipulation and consent agreement), that agreement will be entered as a support order if it is approved by the court.

2. Do I need to have an attorney to get an order for support?

It is not required that you have an attorney to file a petition for support in a divorce action. However, an attorney may be helpful when filing papers and following specific rules. For paternity and family support actions, the Prosecuting Attorney can assist you with the filing of a petition for support.

3. Does the judge have to use the Child Support Guideline or the Friend of the Court recommendations when setting support orders?

The Child Support Guideline and the Friend of the Court recommendation are used to assist the judge in making a decision concerning support amounts. The judge does not have to follow the Friend of the Court recommendation or guideline when making a final decision.

4. If I have been paying my child support and the custodial parent is not allowing visitation, do I have to keep paying support?

Yes, visitation and support are separate orders of the court, with separate enforcement procedures. (See visitation enforcement section in the next column.)

5. The non-custodial parent is not paying support. What can I do?

Contact the Friend of the Court and request enforcement if the back support equals payments of four weeks or more. You may also contact an attorney to file an enforcement action.

6. The payer of support is self-employed and not making his or her support payments. What can the Friend of the Court do?

Income withholding orders are not usually effective when a payer is self-employed. In these cases, the Friend of the Court may seek enforcement using one or more of the following options:

- (1) Petitioning the court for a show cause hearing.
- (2) Submitting the payer's name for tax intercept.
- (3) Filing a lien on the payer's property.

Contact your Friend of the Court office for further information concerning these options.

7. My court order states that I am to pay support through the Friend of the Court office. Can I pay the support to the custodial parent directly?

Not without changing your court order.

Support is paid through the Friend of the Court in order that an official record of payments is maintained. If you want credit for payments made directly to the custodial parent, you must obtain a court order that directs the Friend of the Court to credit your account for a specific amount.

8. If child support has been ordered by the court and either parent has a major increase or decrease in income, what can be done?

The Michigan Child Support Guideline requires the Friend of the Court to consider both parent's income when making child support recommendations.

If either party has had a large increase or decrease in income, they may wish to contact the Friend of the Court to request a review of the support order (see Support Modification Section — page 4).

If the payer and payee can mutually agree to a change in support order, and sign a written agreement (stipulation and consent agreement), that agreement will be entered as an order, if approved by the court.

9. Does the Friend of the Court have the right to deduct statutory service fees from a child support payment?

Michigan Court Rules provide that the Friend of the Court may deduct unpaid fees from any support money paid after the fee is due (January 2nd and July 2nd of each year).

10. If I am receiving public assistance do I still get child support?

No, all child support payments paid while you are receiving public assistance must be sent by the Friend of the Court to the Michigan Department of Social Services.

However, if the payer is making payments, you are entitled to receive from the Department of Social Services up to the first \$50.00 of any child support paid each month.

If you have questions about this program, contact your local Department of Social Services support specialist.

11. Is the Friend of the Court responsible for making sure that child support money is being spent on the child?

The law does not give the Friend of the Court the right to question how child support payments are spent.

VISITATION ORDERS

A visitation order establishes parenting time between a parent and children.

The Friend of the Court has the responsibility to enforce all visitation orders.

Visitation Enforcement

The Friend of the Court must begin enforcement proceedings when it receives a written complaint stating specific facts including dates, times and reasons given, about an alleged denial of visitation, and when the Friend of the Court determines that there is reason to believe the court's order has been violated.

A party has the right to request the Friend of the Court to assist in preparing a written complaint about visitation.

If the Friend of the Court has reason to believe that the visitation order has been violated, the office may schedule a meeting with the parties and attempt to resolve the differences.

If the above is not successful, the Friend of the Court shall do one or more of the following:

- (A) Apply the local make-up visitation policy (contact the Friend of the Court for more information about its policy).
- (B) Begin a civil contempt proceeding with the court by filing a petition for an order to show cause.

Questions and Answers Regarding Visitation

1. My visitation order states I have "reasonable visitation rights." What does this mean?

This means the parents have the responsibility for setting up a mutually agreed upon schedule for visitation which is reasonable under the circumstances. If you cannot mutually agree to a visitation schedule, the Friend of the Court in your county may have adopted a policy. For example, in Ingham County the policy is:

Reasonable Rights of Visitation

ALTERNATE WEEKENDS: Friday at 6:00 p.m. until Sunday at

6.00 p.m. (time and days to be modified as work schedules may mandate, i.e. visiting parent works afternoons, Saturday at 10:00 a.m. until Sunday at 6:00 p.m., etc.)

ALTERNATE HOLIDAYS: Said Holidays defined as New Years Day, Easter Sunday, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, and Christmas Day. Unless otherwise specified, the parties shall alternate Christmas Eve and Christmas Day. When the visiting parent has Christmas Day visitation, that visitation will commence at 9:00 p.m. on Christmas Eve and extend until 9:00 p.m. on Christmas Day, the intent being that the child(ren) wake up in the home of the parent with whom they are spending Christmas Day.

When the child(ren) are to spend Christmas Day with the custodial parent, visitation with the visiting parent on Christmas Eve shall be from 9:00 a.m. until 9:00 p.m. on Christmas Eve, when the child(ren) shall be returned to the home of the custodial parent. Holiday visitation shall take precedence over weekend visitation, should the holiday fall during a weekend period. Hours for holiday visitation will be from 9:00 a.m. until 9:00 p.m. the day of the holiday.

SUMMER VISITATION: Two weeks during the summer months.

Adequate advance notice of the specific two weeks requested should be in writing to the custodial parent, with a copy to the Friend of the Court, by April 1st of each year.

ADDITIONAL TIME: Other such times as agreed to between the parties.

TRANSPORTATION TO AND FROM VISITATION IS TO BE PROVIDED BY THE VISITING PARENT OR AN ADULT FAMILIAR TO THE CHILDREN, UNLESS OTHERWISE SPECIFIED BY THE COURT.

2. I have a specific visitation schedule that I need to change. What can I do?

If you need a temporary change in your visitation schedule, contact the other parent to discuss making other arrangements.

If you need to make a permanent change,

- (A) See if you and the other parent can agree to a change (stipulation and consent agreement).
- (B) The Friend of the Court can provide mediation services, if both parties agree to participate.
- (C) File a petition with the court for a change in the order on your own behalf or contact an attorney to help you file the petition.

3. If the visiting parent is not making regular child support payments, do I have to allow visitation?

Yes, visitation and support are separate orders of the court, with separate enforcement procedures (see support enforcement section — page 4).

4. The other party is not following the visitation order (i.e., children not ready for visitation on time; children are picked up and/or returned late. What can I do?

File a written complaint with the Friend of the Court office. If the Friend of the Court determines that either parent has violated the visitation order, they have the responsibility to proceed with enforcement (see Visitation Enforcement section — page 5).

5. Clothing is not sent for or returned from visitation. Is there anything The Friend of the Court can do?

Unless your court order states each parent's responsibility for clothing, the Friend of the Court does not have any enforcement power.

6. Do I have to let my children go for visitation if it appears that the visiting parent has been drinking or using drugs?

Any denial of visitation is a violation of the order. You may be ordered to explain to the court at a contempt hearing why you disobeyed the court order. Full substantiation of your allegation will be essential. If you feel there is adequate cause that visitation should not be taking place as ordered then it is your responsibility to petition the court for a change in your order to restrict the visitation.

7. I am concerned about the other parent discussing changes in the court orders with the children. What can the Friend of the Court do?

Unless your court order forbids such discussions, the Friend of the Court has no enforcement power.

8. The Friend of the Court has refused to enforce my visitation order. What can I do?

The law requires the Friend of the Court to enforce visitation orders. If they refuse to comply with the law you have a right to file a grievance regarding their procedures.

9. Does the Friend of the Court have a responsibility to investigate alleged abuse and/or neglect of a child?

A Friend of the Court does not have any responsibility to investigate child abuse or neglect. Allegations of abuse or neglect should be reported to the Protective Services unit of your local Department of Social Services office.

10. I have a visitation order, and my teenage child does not want to come for visitation. What can I do?

The parents of The child are bound by the court orders. However, you may consider one or more of the following:

- (A) You may want to see if you can work out a different visitation arrangement with the child and the other parent.
- (B) You can file a petition with the court requesting a change in your visitation order.
- (C) You can request that the Friend of the Court enforce your visitation order (See Visitation Enforcement Section — page 5).

General Guidelines

Children are to be packed and ready to go for visitation at the appropriate time, and they are to be returned on time with clothing intact.

Failure to pick up the children within one half hour of the scheduled time can be considered a forfeiture of that visitation. If prior arrangements have been made for a later or earlier pick up time the above does not apply unless there is a tardiness on that particular time.

Visitations are to be between the visiting parent and the child(ren). During visitation it is the visiting parent's responsibility to provide child care should they have to work or have other appointment, etc.

Children have the inherent right to know and appreciate what is good in both parents without one parent degrading the other or being placed in a position to manipulate one parent against the other.

Mother's Day and Father's Day should be spent with the respective parent.

The child(ren)'s birthday should be alternated yearly.

If visitation is denied the Friend of the Court must be notified within seven (7) days if make-up visitation is requested.

QUESTIONS REGARDING MISCELLANEOUS ISSUES

Change of Domicile

1. My order states that I cannot move my children from the state of Michigan without approval of the court. How do I get the court's approval?

If the parties mutually agree to a change of domicile and they sign a written agreement (stipulation and consent agreement), it will be entered as an order, if approved by the court.

If the parties cannot mutually agree on a change of domicile, they have the following options:

- (A) Contact the other party to see if he or she will agree to mediation.
- (B) File a petition on your own behalf or contact an attorney to help you

file the petition.

Notification to the Friend of the Court or filing a petition does not allow you to move from the state, prior to a court order being entered.

Court Speaks Through its Written Orders

2. *Why won't the Friend of the Court enforce what the Judge said in court, even if it is not in the written order?*

The court speaks through written orders, therefore, the Friend of the Court enforces only the written orders.

If you feel that the written order is incorrect, you may want to order a transcript of the hearing from which the order was established.

If you feel the order does not agree with the transcript, bring your concerns to the attention of the person who prepared the written order and request a change.

You can also file a motion with the court asking the court to correct the written order.

Property Settlement

3. *Can the Friend of the Court enforce the property settlement provisions contained in my Judgement of Divorce?*

The Friend of the Court enforces custody, visitation and support orders. The Friend of the Court does not have the power to enforce property settlement orders.

Referees

4. *What is a Friend of the Court referee and what can they do?*

A referee is a person who takes testimony and reports to the court. A referee can be either a Friend of the Court or an attorney employed by the Friend of the Court.

The Chief Judge of a circuit court may appoint a referee to hear any domestic relations matter (except an increase or decrease of spousal support).

A hearing before a referee is not the same as a hearing before a

Judge. The findings of a referee are only recommendations to the court, and are not final. These recommendations will become an order of the court if neither party files an objection.

State law requires that any written report and recommended order made by a referee must be given to the parties and their attorneys before the judge takes any action on the recommendation.

If a party disagrees with a referee's recommendation, he or she has the right to a hearing before the court. This hearing must be requested in writing within 21 days after receiving the referee recommendation (request for a hearing on an income withholding order must be made within 14 days).

Contact the Friend of the Court office for the address to which the written request for a hearing should be sent.

Parent Locator

5. *What can the Friend of the Court do to find a missing parent?*

The state and federal government have set up a parent locating service which can be used to:

- A. Locate a parent to collect child support;
- B. Locate a parent for deciding or enforcing a child custody matter;
- C. Locate a parent in cases of parental kidnapping.

The Friend of the Court, Prosecuting Attorney and Department of Social Services support specialist can ask to use this service. The full name, date of birth, social security number, and last known address of the parent to be located are required.

Adoptions

6. *What happens to my child support order and any support that may be owed when children are adopted?*

Adoptions take place in Probate Court. The Friend of the Court must be provided copies of all Probate Court adoption orders. The child support order stops when children are adopted. The Friend of

For additional information refer to these readings and/or contact your local Friend of the Court

The Michigan Divorce Book. Maran, M. 1986. A guide to doing an uncontested divorce without an attorney; with minor children.

The Complete Legal Guide To Marriage, Divorce, Custody. Sack, S.M. 1987.

The Process of Divorce. Kressel, K. 1985. How professionals and couples negotiate settlements.

Divorce Mediation. Schneider, K. 1984. The constructive new way to end a marriage without big legal bills.

The Divorce Decision. Neely, R. 1984. The legal and human consequences of ending a marriage.

Inside Divorce. Addeo, E. 1975. Is divorce really what you want?

Divorce Mediation. Irving, H. 1981. A rational alternative to the adversary system.