

MOTION REGARDING CUSTODY

Form and Instructions

Revised: December 2011

This form is for people who want the court to change their custody order, or people who have a pending case in Genesee County and need to establish custody within that case. Carefully read and follow all of the instructions before filling out the form so that you understand your rights and duties.

If you and the other party agree to changing custody within an existent order, schedule an appointment with your caseworker at Friend of the Court. DO NOT FILE THESE DOCUMENTS. A hearing may not be necessary.

If you and the other party DO NOT agree or if you need to establish custody in a pending case, a court hearing must be held before it occurs. You may represent yourself at the hearing or have an attorney represent you. The Friend of the Court (FOC) office is not required to make an investigation or recommendation unless ordered to by the court. The FOC does not represent either party at this hearing.

MOTION REGARDING CUSTODY

THIS FORM MUST BE COMPLETED IN INK (TYPED OR PRINTED). DO NOT USE PENCIL.

Step 1: Complete the Motion Regarding Custody form as instructed below.

- A. Before you fill in the Case No. and judge, get your court papers for custody, divorce, separate maintenance, family support or paternity and copy the Case No. and judge from those court papers onto this 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.

- 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 your 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.
- C. Check only one box. If you have a judgment or order for custody, divorce, separate maintenance, family support, or paternity, 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 fill in the date of the order. If there is no information about custody, check box b.
- D. Check this box only if you checked box a. in C. above. Read your court papers for custody, divorce, separate maintenance, family support or paternity to find out

who was ordered to have custody. Write this information here along with the name(s) and the child(ren).

- E. 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. State the circumstances that require a custody order or a change in custody. Explain in as much detail as possible what has happened. If you need more space, use a separate sheet of paper. If you use a separate sheet of paper, make 3 copies and bring the original and all copies to the Clerk's Office when you file your motion.
- G. State the causes that require a custody order or a change in custody. The Referee will review these causes using factors from the Child Custody Act to determine the best interests of the child. Explain in as much detail as possible what the causes are. If you need more space, use a separate sheet of paper. If you use a separate sheet of paper, make 3 copies and bring the original and all copies to the Clerk's Office when you file your motion.
- H. Check this box if you and the other party agree about custody. Explain in as much detail as possible what you agreed to including support and parenting time. If you need more space, use a separate sheet of paper. If you use a separate sheet of paper, make 3 copies and bring the original and all copies to the Clerk's Office when you file your motion.
- I. You need to explain in as much detail as possible what you want the court to order. If you checked H. above, you only need to write "Same as H. above". If you need more space, use a separate sheet of paper. If you use a separate sheet of paper, make 3 copies and bring the original and all copies to the Clerk's Office when you file your motion. You need to include information about support and parenting time as well.
- J. Write in today's date and sign your name.

Step 2: Take the original form with attachments and all copies of attachments to the Clerk's Office. **They will charge you \$100 to file the documents** (\$20 Motion Fee and \$80 Judgment Fee).

Step 3: The clerk will fill in a hearing date and time on the original and make 4 copies of the motion form. They will place the original in the court's file. They will collect the filing fees and return 3 copies of the motion and attachments to you.

Step 4: Complete and file the certificate of mailing as instructed below.

Completing the "CERTIFICATE OF MAILING"

There are court rules which must be followed to make sure that the other person knows about the hearing. The "Motion Regarding Custody" form must be mailed at least nine (9) days before the hearing date.

Step a: Have a friend or family member over the age of 18 (not you) mail a copy of the Motion Regarding Custody with any attachments to the other party making sure your return address is on the envelope.

Step b: After that person mails the documents, have them fill in the date they mailed it and sign their name in the "Certificate of Mailing" section of the two photocopies you have left.

Step c: Return to the Clerk's Office with both completed photocopies. The clerk will keep one for the court's file and true copy stamp and return the other copy to you. You must file the "Certificate of Mailing" portion of the form at least 7 days prior to the hearing date.

You are now ready to attend your referee hearing.

What happens if the copy sent to the other party is returned to you?

The hearing cannot be held until you can prove to the court that the other party knows about the hearing. If the other party's copy is returned to you, you must:

1. Get the current address of the other party from the Friend of the Court or another source.
2. If there are less than eight (8) days before the hearing date, go to the Clerk's Office to reschedule the hearing date. Bring your copy of the Motion Regarding Custody with you because the clerk will utilize it when setting a new hearing date.
3. Follow all the same steps as when you filed the motion originally including the "Certificate of Mailing" portion.
4. When a new address cannot be obtained, refer to the Michigan Court Rules (MCR 2.106). A copy of these rules may be available at your local library.

Getting Ready for Court

1. Read the list of factors that must be considered by the court. A list can be found in the FOC Pamphlet. This is what the referee will consider in determining the best interest of the child(ren) if custody is to be decided.
2. Make a list of information which you feel is important for the Referee to know. this information should consider the best interest of the child(ren).
3. Gather any paper such as school, church, or police records, etc., that you think will show the Referee why or why not a change in the custody or parenting time order should be made.
4. Bring proof of your income. You should have your last three years tax returns and information on your current income.
5. If you have any information regarding the other party's income, you should bring that information.
6. Bring information regarding your medical, dental and vision coverage that may also cover the child(ren). If you have information about the health insurance of the other party, you should also bring that.
7. Dress appropriately and DO NOT bring your children with you. If the referee needs to speak to the children, another time will be scheduled.

The Hearing

Listed below are some tips which may help both parties during the hearing:

1. Listen carefully to what the Referee says during the hearing.
2. If you want to tape record the hearing, you must ask the Referee before the hearing starts.
3. The Referee will listen to you, but do not interrupt. Raise your hand and wait for the Referee to call on you before speaking.
4. Ask questions of the Referee if you do not understand what changes they have recommended.
5. Make sure you know and write down the following:
 - a. Will there be an investigation and for what purpose?
 - b. What is the Referee recommending?
 - c. What is the new parenting time, if any?
 - d. Who will have custody?

Referral for FOC Investigation

If the referee recommends an FOC investigation, they will draft an order, file it, and mail copies to both parties as well as provide a copy to FOC. They will also schedule a future hearing date for a review and/or implementation of the recommendations of the investigation. Notice of the date will be sent to both parties by the Referee's Office. When you receive the order for investigation, you must contact your caseworker at FOC to arrange an appointment for the investigation.

After the Hearing

After the hearing the Referee will prepare a Recommendation for an Order. A copy of that recommendation will be mailed to each party. The recommendation will become an Order of the Court unless either party files an objection and follows the procedures below within twenty-one (21) days after the Referee's recommendation was mailed. It would be in the best interest of both parties to verify the mailing addresses on file at both the Friend of the Court as well as the Circuit Court so that when the recommendation is mailed each party will receive a copy. The next section explains how to appeal the recommendation of the Referee.

If no written objection and notice of hearing are filed with the clerk's office within twenty-one (21) days after the recommendation is mailed, the order will take effect.

Right to a Judicial Hearing

If either party disagrees with the recommendation of the referee, they have a right to request a judicial hearing. This is a hearing before the Family Law Judge assigned to your case. A judicial hearing may be obtained by filing an objection to a referee hearing within 21 days of the date the recommendation was mailed to you. To file a written objection, you must go to the clerk's office and complete an "OBJECTION TO REFEREE'S RECOMMENDED ORDER" (blank forms are available at the clerk's office). You will pay a \$20 filing fee and the clerk will issue a hearing date.

The party objecting to the recommendation must serve the objection and notice of hearing on the opposing party or counsel in the manner provided in MCR 2.119 (c).

If no written objection and notice of hearing are filed with the clerk's office within twenty-one (21) days after the recommendation is mailed, the Order will take effect.

**STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY****MOTION REGARDING CUSTODY****(A)****CASE NO.**

Court address

Telephone no.

(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. ☐ a. On _____ a judgment
Date

or order was entered regarding custody.

☐ b. There is currently no order regarding custody.**(D)**☐ 2. The ☐ plaintiff ☐ defendant ☐ third party

was ordered to have custody of the following child(ren):

(E)3. The child(ren) have been living with _____ at
Name(s)_____ since _____
Complete address Date**(F)**

4. Circumstances have changed as follows that require custody or a change in custody:

Use a separate sheet to explain in detail what has happened and attach. Include all necessary facts.

(G)

5. Proper cause exists as follows that require custody or a change in custody: Use a separate sheet to explain in detail which factors of the Child Custody Act for determining best interests of the child(ren) are affected by the circumstances in 4 above. Include all necessary facts.

(H)☐ 6. _____ and I agree to custody, support, and parenting time as follows:
Name

Use a separate sheet to explain in detail what you have agreed on and attach. Include all necessary facts.

(I)

7. I ask the court to order that custody, parenting time, and support be as follows:

Use a separate sheet to explain in detail what you want the court to order and attach.

(J)_____
Date_____
Moving party's signature**NOTICE OF HEARING**A hearing will be held on this motion before _____
Judge/Referee**(K)**on _____ at _____ at _____
Date Time Location

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 88.

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 attorneys by first-class mail addressed to their last-known addresses as defined in MCR 3.203.

(L)_____
Date_____
Moving party's signature