

CUSTODY QUESTIONS & ANSWERS

I want to obtain a change of physical custody with my child/ren. What do I do?

If the parties **agree**, a stipulation can be signed at the Friend of the Court office, which normally is approved by the Circuit Court judge. You need to file a “*Stipulated Motion for Change of Custody, Parenting Time and/or Domicile*” and “*Domestic Relations Judgment Information (FOC 100)*” found on this website. There will be a filing fee.

If the parties **do not agree**, a “*Motion (Petition) for Disputed Custody*” must be filed with the court. Form is available on this website. There are filing fees. Thereafter, an investigation is performed by the FOC investigator. Stipulations normally do not require the assistance of an attorney. Motions for Change of Custody normally do require the assistance of an attorney.

What is the difference between the term legal custody and the term physical custody?

The term “legal custody” refers to the authority to make major decisions concerning the health, safety, and welfare of the child/ren. Decisions concerning discretionary operations, choice of surgeons, and attendance at a private or public school are examples of decisions concerning legal custody.

“Physical custody” refers to the authority to make decisions concerning the day-to-day care of children – where the child/ren normally live(s); clothes that he or she wears; food choices, bedtimes, etc.

Can a custody order be changed if both parents agree?

Both parents may sign a stipulation agreement and present an order to the court. If the judge approves and signs the consent order, it will then become the new custody order. (See first question above)

Do I need an attorney to file a Motion to Change Custody?

You may file the motion on your own, and the FOC will provide the forms and instructions that you will need, or you can print a form from this site. However, the court will expect you to follow the same rules that an attorney must follow and pay any filing fees. There are many complex issues in a custody case and most people prefer to have an attorney represent them. The FOC cannot file a motion for you, nor can the office provide you with an attorney or tell you what to say in the motion. If you have retained an attorney (for any reason), you CANNOT, file this motion on your own. You MUST contact your attorney and have him/her do the filing.

Can the FOC assist parties in reaching an agreement regarding custody?

Yes. The FOC provides domestic relations mediation when there is a custody dispute and both parties agree to participate in mediation. (See details under Procedural Issues – Mediation on this site)

If a motion for custody has been filed, and the parents cannot reach an agreement on their own, what will the FOC do?

The FOC must:

- Offer mediation services to the parties
- If the judge directs, investigate the custody issue and file a written report and recommendation based upon the “best interests of the child” factors listed in the Michigan Child Custody Act.

May I receive a copy of the FOC’s custody report and recommendation?

Upon request, and before the court acts on the recommendation, the FOC must give each party or that party’s attorney a copy of the report, including the custody recommendation and a summary of the information used in making the recommendation.

What happens if I have custody according to the court’s order, but the other parent does not return the child to me as required by the order?

- You may contact the FOC office and request they enforce the order.
- You may contact your attorney.
- If you believe the other parent will refuse to return the child, you may contact the police or the prosecuting attorney and ask either to file a parental kidnapping charge.

How do I enforce the custody order if the other parent takes our child to another country?

When a child who is a U.S. citizen is illegally kept outside of this country, the U.S. State Department’s Office of Children’s Issues will work with the local U.S. embassy and the other country’s government to assist the child and the lawful custodial parent. However, because child custody disputes are private legal disputes between the two parents, the State Department has no jurisdiction to force the other parent to obey a court order. If the parents cannot reach an agreement, this kind of child custody dispute often must be resolved by judicial proceedings in the country where the child and the other parent are living. The State Department will help the lawful custodial parent to file the appropriate documents with the foreign authorities. It also will monitor and report on the foreign judicial or administrative proceedings.

Is the FOC allowed to investigate child abuse or neglect?

No. The FOC does not have the authority. Abuse or neglect should be reported (in the county where the custodial parent and child live) to the Department of Human Services (DHS) Child Protective Services Division.

If I change my mind and want to stop my request for a custody change, what must I do?

You may withdraw your motion by completing a “*Withdrawal of Motion for Change of Custody*” form found on this site.

If I object to the Referee’s Recommendation, what can I do?

You can file for a DeNovo Review (form “*Objection to Referee’s Recommended Order (DeNovo Review) (FOC 68)*” found on this site).