

MOTION REGARDING CUSTODY

DO NOT FILE THIS FORM IF THE OTHER PARTY IS IN AGREEMENT TO THE CHANGE YOU ARE REQUESTING. YOU MAY SUBMIT A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES AND NOTARIZED, REQUESTING AN ORDER BE ENTERED BASED UPON YOUR AGREEMENT.

Use this form if:

- you have a pending case for custody, divorce, separate maintenance, or paternity: or
- you are a party who has custody through a judgment of custody, divorce, separate maintenance, or an order of filiation.

You cannot use this form:

- to start a custody case: or
- if you are a third party and want to intervene to get custody of the child(ren) in a pending case for custody, divorce, separate maintenance, or paternity.

Following instructions A through J and printing neatly in black ink, please complete the Motion. Once you have completed the form, return it **and three (3) copies of the completed form, including any attachments,** to the Bay County Clerk of the Court Office, 1230 Washington Avenue Suite 725, Bay City, MI 48708, along with a check or money order for \$100.00 payable to the **Clerk of Court** to cover the \$20.00 filing fee and the \$80.00 Judgment Fee which is required in the State of Michigan.

The Clerk of the Court will notify the Friend of the Court Office once the motion has been filed. The Friend of the Court will schedule a hearing date and send copies of the Motion with attachment(s) and Notice of Hearing to the parties.

**DO NOT ATTACH
CORRESPONDENCE FROM YOUR
CHILDREN TO YOUR MOTION**

MCR 3.218(3)(D) IDENTIFIES COMMUNICATION FROM A MINOR CHILD AS CONFIDENTIAL INFORMATION AND WILL NOT BE ACCEPTED AS AN ATTCHMENT WHEN A MOTION REGARDING CUSTODY IS FILED. HOWEVER, YOU MAY ASK THAT THE ORIGINAL COMMUNICATION AUTHORED BY THE CHILD BE INCLUDED IN THE FRIEND OF THE COURT FILE WHICH IS CONSIDERED A NON-PUBLIC RECORD.

INSTRUCTIONS FOR COMPLETING "MOTION REGARDING CUSTODY"

Items A through J must be completed before your motion can be filed with the court. Please complete **ONLY** these items. Read the instructions for each item. Then neatly print the correct information for that item on the form, using **black** ink.

- A. Before you fill in the Case No., get your court papers for custody, divorce, separate maintenance, or paternity and copy the Case No. from those 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 the names where they belong, you must check the box "moving party" in the same box as your name.

- C. Check only one box. If you have a judgment or order for custody, divorce, separate maintenance, 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. 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, or paternity to find out who was ordered to have custody. Write this information here along with the name(s) of 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. Print this information as neatly as you can.
- G. State the causes that require a custody order or a change in custody. The judge or 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. Print this information as neatly as you can.
- 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. Print this information as neatly as you can.
- 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 4 above." If you need more space use a separate sheet of paper. You need to include information about support and parenting time as well. Print this information as neatly as you can.
- J. Write in today's date and sign your name.

CUSTODY

A number of custody arrangements are possible. The most common are:

- **Joint Legal Custody:** Means that parents will communicate and cooperate with one another and attempt to reach mutual decisions regarding major issues affecting their child(ren). This decision-making process includes, but is not limited to: major medical decisions, educational decisions, and religious upbringing, if any.
- **Joint Physical Custody:** Means that the child(ren) live with one parent part of the time and the other parent part of the time. This time does not have to be equal. The parent who has care of the child(ren) at any given time is responsible for routine decisions regarding the child(ren).
- **Primary Physical Custody:** Means that the child(ren) live primarily with one parent.
- **Sole Custody:** Means that the child(ren) live with one parent and that parent is responsible for making major decisions regarding the child(ren).

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge must decide by considering all of the following factors of the Michigan Child Custody Act [MCL 722.23; MSA 25.312(3)]

- (a) The love, affection and other emotional ties existing between the parties involved and the child(ren).
- (b) The capacity and disposition of the parties involved to give the child love, affection and guidance and the 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 and 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(ren).
- (i) The reasonable preference of the child(ren), if the court deems the child(ren) 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(ren) and the other parent.
- (k) Domestic violence, regardless of whether the violence was directed against, or witnessed by the child.
- (l) Any other factor considered by the court to be of relevance to a particular child custody dispute.

Additionally, parents should be aware that Michigan law addresses and defines the circumstances under which a change of custody may be granted. According to MCL 722.27 (1) (c), "...The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to the permanency of the relationship shall also be considered."

