

## **Form FOC 115**

# **MOTION REGARDING CHANGE OF DOMICILE/LEGAL RESIDENCE**

**Use this form if:**

- You have an existing case and docket number.
- You are seeking to allow a change in the domicile / legal residence of a party or child
- This form cannot be used to initiate a domestic relations case.

**Please read the instructions carefully before completing your motion.**

**INSTRUCTION PAGE**  
**Do not submit this page with your motion**

## INSTRUCTIONS FOR FILING THIS MOTION

**FEES:** All filings of motions on an existing case require the payment of a \$20.00 filing fee. In addition, if the Court grants the relief you are seeking, there is a judgment fee that has to be paid before the Court will enter the new order. Judgment fees are \$40.00 for a support order and \$80.00 for a custody or parenting time order. If you file more than one motion on the same case at the same time, you will only have to pay one filing fee of \$20.00 and one judgment fee. Fees are paid at the Delta County Clerk's Office and any checks should be made payable to the Delta County Clerk.

**WAIVER OF FEES:** If you are indigent (without financial resources) or are receiving public assistance, you can apply to the Court to have your fees waived. You should obtain the form: Affidavit Suspending Fees and Costs (Form MC 20) from the Friend of the Court Office or the Delta County Clerk's Office. Complete the form, have your signature notarized, and submit it to the Clerk's Office before you submit your motion.

**1). COMPLETE THE MOTION FORM:** The form (FOC 115) should be completed in a legible manner by either neatly printing or typing the requested information. Keep in mind that the Court processes hundreds of motions a year. Time spent trying to decipher what a party intended to write down is less time that the Court will have to devote to the legal issues that are presented by the motion. You should first obtain a copy of the most recent Court order in your case before you begin.

- A). Carefully complete the case number section (box A in the upper right hand corner) by referring to your copy of the most recent order.
- B). Correctly identify the Plaintiff, Defendant and/or Third Party by also referring to your copy of the most recent order. You are the "moving party". Be certain to check the box "moving party" where your name appears.
- C). '1' - Enter the date of the most recent custody order. '2' – check the box that describes the current legal custody arrangement.
- D). If you checked box 'sole with the' in section C, you must explain why it is in the child(ren)'s best interest to allow the change in the legal residence or the domicile of the child(ren). If you checked the box 'joint' in section C, you must explain how each of the factors in MCL 722.31- *Legal Residence Change of Child Whose Parental Custody Governed by Court Order* applies to your situation. A copy of MCL 722.31 is included in these instructions. Attachments should be on 8 ½

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by 11 inch paper and, if typed, double spaced.

- E). For items 4 and 5, explain what it is that you want the Court to order. If a party or the child(ren) are permitted to move, you should indicate what, if any, changes should be made to the parenting time arrangement. Attachments should be on 8 ½ by 11 inch paper and, if typed, double spaced.
- F). Be sure to date and sign your motion.

**2). HEARING DATE AND TIME:** Contact the Friend of the Court Office (for support motions: Caseworker Specialist Stacey Morgan at (906) 789-5134 and for custody/parenting time motions: Legal Assistant Micki Heribacka at (906) 789-5135), state the type of motion you are filing and that you are requesting a hearing date and time. You will be given the name of either a Judge or Referee. You will also be given a date and time for your hearing. Finally, you should also be notified of the location of your hearing.

Fill out the Notice of Hearing section (section I) on the motion form. Do not complete the Certificate of Mailing section at this point. Your motion should now be ready to be photocopied.

**3). COPY THE MOTION:** You must make at least three copies of your completed motion and any attachments. Plus you will need two copies without attachments for proof of service. This is a total of five copies of your motion. You will need a sixth copy if there is a third party (custodian or guardian who is not a parent) who also must receive notice of the hearing.

**4). FILE THE MOTION WITH THE COUNTY CLERK:** Take the original and five copies to the Delta County Clerk's Office. Pay the \$20.00 motion fee or submit the Affidavit Suspending Fees and Costs (Form MC 20) signed by the Judge. The Clerk's Office will keep the original motion and attachments for the Circuit Court file and one copy of the motion and attachments to give to the Friend of the Court Office. Retain one copy and any attachments for your records. You should still have one copy with any attachments for the other party and two copies for proof of service.

**5). SERVE THE MOTION AND NOTICE OF HEARING ON THE OTHER PARTY:** Michigan Court Rule 2.119 requires that the other party be served with a copy of the motion at least 9 days before the hearing if notified by mail. Service in Delta County is usually accomplished by mailing via the United States Postal Service.

Mail one complete copy with any attachments to the other party. If there is a custodian or guardian, mail one copy with any attachments to that person as well. Fill out the Certificate of Mailing on the two remaining copies of the motion

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and the copy of the motion with any attachments that you have kept for yourself. Return to the Delta County Clerk's Office with the two remaining copies of the motion with completed Certificate of Mailing. The Clerk's Office will keep one copy for the Circuit Court file and forward one copy to the Friend of the Court Office

**CONFIDENTIAL ADDRESSES:** If the other party has a confidential address, you will need to prepare a stamped, self-addressed envelope for the two copies of your motion that are to be submitted with completed Certificate of Mailing. Do not complete the Certificate of Mailing section. Take the envelope, the two copies of your motion for the Delta County Clerk's Office and the copy of your motion with any attachments for the other party to the Friend of the Court Office. Within one business day, the Friend of the Court Office will mail the copy of your motion with any attachments to the other party. The Friend of the Court will then mail to you, in the envelope you have provided, the two copies of your motion with completed Certificate of Mailing. Return to the Delta County Clerk's Office with the two remaining copies of the motion with completed Certificate of Mailing. The Clerk's Office will keep one copy for the Circuit Court file and forward one copy to the Friend of the Court Office

### MOTION CHECKLIST

Read the preceding instructions carefully and follow all of the steps in the order in which they are set forth. Even though you are proceeding without an attorney, you are still required to follow all of the court rules and procedures. If you do not follow all of the instructions, you might not obtain a hearing or the relief you seek in your motion may be denied.

- Step One:** Complete the motion form ..... Yes
- Step Two:** Obtain a hearing date and time..... Yes
- Step Three:** Make the required number of copies ..... Yes
- Step Four:** File the motion with the Clerk's Office ..... Yes
- Step Five:** Serve the motion on the other party ..... Yes
- Step Six:** File the Certificate of Mailing with the Clerk's Office..... Yes
- Step Seven:** Keep a complete copy of the motion for yourself..... Yes

**AS THE MOVING PARTY,  
YOU MUST ATTEND THE HEARING**

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CHILD CUSTODY ACT OF 1970 (EXCERPT)  
Act 91 of 1970

**722.31 Legal residence change of child whose parental custody governed by court order.**

Sec. 11. (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

(2) A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits, the residence change. This section does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents.

(3) This section does not apply if, at the time of the commencement of the action in which the custody order is issued, the child's 2 residences were more than 100 miles apart. This section does not apply if the legal residence change results in the child's 2 legal residences being closer to each other than before the change.

(4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(5) Each order determining or modifying custody or parenting time of a child shall include a provision stating the parent's agreement as to how a change in either of the child's legal residences will be handled. If such a provision is included in the order and a child's legal residence change is done in compliance with that provision, this section does not apply. If the parents do not agree on such a provision, the court shall include in the order the following provision: "A parent whose custody or parenting time of a child is governed by this order shall not change the legal residence of the child except in compliance with section 11 of the "Child Custody Act of 1970", 1970 PA 91, MCL 722.31."

(6) If this section applies to a change of a child's legal residence and the parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the parent may move to such a location with the child until the court makes a determination under this section.

History: Add. 2000, Act 422, Imd. Eff. Jan. 9, 2001.

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Approved, SCAO

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|--|--|--------------------------|
| <b>STATE OF MICHIGAN<br/>JUDICIAL CIRCUIT<br/>COUNTY</b> | <b>MOTION REGARDING CHANGE OF<br/>DOMICILE/LEGAL RESIDENCE</b> | <b>A</b> <b>CASE NO.</b> |
|--|--|--------------------------|

Court Address

Court telephone no.

**B** Plaintiff's name, address, and telephone no.  moving party

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

v

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

\_\_\_\_\_

\_\_\_\_\_

- C** 1. On \_\_\_\_\_ a judgment or  
Date  
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** 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 \_\_\_\_\_  
Judge/Referee  
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 FOC116.

**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