

Otsego County Friend of the Court
800 Livingston Blvd., Suite 1A, Gaylord, MI 49735
Phone: (989) 731-7450 Fax: (989) 731-0226
www.otsegocountymi.gov

Opting Out of Friend of the Court Services

By using this form packet, you are representing yourself in a court action regarding opting out of Friend of the Court services. In order to receive the action you seek, you must follow the instructions in this packet. Failure to complete ALL of the required steps, may result in a delay of your case and/or the Court being unable to grant you the relief that you are requesting.

THE FRIEND OF THE COURT DOES NOT REPRESENT EITHER PARTY AND IS PROHIBITED FROM PROVIDING LEGAL ADVICE

This packet includes:

- Advice of Rights form (FOC 101)
- Motion to Opt Out of FOC Services and Notice of Hearing (CC 326)
- Proof of Mailing (MC 302)
- Application for IV-D Services (DHS-1201D)
- Notice Regarding Filing Fees
- Order Exempting Case from FOC Services (FOC 102)

For the Court to consider a request to exempt a case from Friend of the Court services (opting out), a motion must be filed and scheduled for hearing. The motion can be filed at any time prior to a judgment entering or after a judgment has entered. **Both parties must sign the Advice of Rights Regarding Use of Friend of the Court Services and attach the form to the motion.** See the instructions included in this packet on how to file and serve the motion.

Opting Out BEFORE a Friend of the Court Case is Opened:

If the parties have filed a new domestic relations case and a motion to opt out, the Court must approve the motion and enter an order, unless the Court determines that one or more of the following conditions are true:

- A party is eligible for Title IV-D services because of the party's current or past receipt of public assistance.
- A party applies for Title IV-D Services.
- A party requests the Friend of the Court to open and maintain a Friend of the Court case even though the party may not be eligible for Title IV-D services because the domestic relations matter involves, by way of example and not limitation, spousal support only, child custody, parenting time or child custody and parenting time.

- There exists evidence of domestic violence or uneven bargaining positions and evidence that a party has chosen not to apply for Title IV-D services against the best interest of either the party or the party's child.
 - The parties have not filed an Advice of Rights form listing Friend of the Court services and an acknowledgement that the parties are choosing to do without those services.
1. At the hearing, the Referee will determine whether the qualifications to opt out of Friend of the Court services have been met. If the Court determines that the case may be exempt from Friend of the Court services, the Court will enter the order exempting the case.
 2. The 46th Circuit Court requires the Friend of the Court to prepare an informational recommendation for support based upon the Michigan Child Support Formula in all cases, even if you are intending to opt out of Friend of the Court services. This information will be needed when preparing your final judgment even if you and the other party agree to no support or an amount of support that differs from the recommendation (which is considered a deviation from the child support formula). If you deviate from the formula, you will be required to explain, in detail, in the Uniform Support Order, your reason(s) for the deviation and the support amount determined on the child support formula. Note that any amount agreed upon that is different than the support formula including \$0 would be considered a deviation. The Court will make the final determination concerning the deviation of support based on the factors set forth in the child support formula.
 3. The Friend of the Court will mail a **Case Questionnaire** to both parties. The Questionnaire must be completed, signed and returned along with copies of your last four pay stubs. If a party is self-employed, copies of the last three years of personal and business tax returns, including all schedules, W-2 and 1099 forms must be included. Because the child support formula includes the number of parenting time overnights each party has in a calendar year, an Overnight Parenting Time Verification form will be included to complete and return. In addition, the enclosed IV-D Application for Services must be signed and returned. This enables the Friend of the Court to prepare the recommendation as part of its statutorily required duties. Failure to return any of the above-referenced documents could result in a delay of your case.
 4. An informational recommendation will be prepared and sent to both parties and any attorneys of record. If the Plaintiff is unrepresented in a divorce case, a Judgment of Divorce packet and a Uniform Support Order (USO) Form (FOC 10a) and, if appropriate, a Deviation Addendum Form (FOC 10d) must be completed and attached to your Judgment of Divorce. If you are seeking spousal support, a Uniform Spousal Support Order Form (FOC 10c) must be attached to your Judgment of Divorce. This can be obtained by accessing the Michigan Supreme Court website via the following link:
<https://www.courts.michigan.gov/siteassets/forms/scao-approved/foc10c.pdf>
 5. If a Motion to Opt Out was not filed at the time the initial Complaint was filed and:
 - 1). Your final hearing is scheduled;
 - 2). You have received a recommendation for support from the Friend of the Court, or a temporary support order has already entered and;

3). Both parties wish to opt out of Friend of the Court services;

the Motion to Opt Out of Friend of the Court services and Notice of Hearing, Advice of Rights form and Proof of Mailing must be filed with the Clerk of the Court (225 W. Main St., Gaylord, MI 49735), after copies have been served on the other party and the Friend of the Court. See instructions on next page on how to file and serve the motion.

A hearing date/time can be obtained from the Judicial Assistant (Judge Hunter – (989) 344-3271; Judge Mertz (989) 731-0224). You should request that your Motion to Opt Out be scheduled for the same date/time as your final hearing.

NOTICE

You must submit your proposed Judgment of Divorce and Uniform Support Order for approval to the Friend of the Court office at least 30 days before your final judgment hearing. The Judge may not approve/sign your Judgment of Divorce unless it has been approved by the Friend of the Court in advance. Your divorce could be delayed if you are deviating from the child support formula and the Friend of the Court has not received the necessary information to prepare a recommendation for support.

Opting Out AFTER a Final Judgment Has Entered:

If the parties have an existing domestic relations case and a Motion to Opt Out is filed, the Court must approve the motion and enter an order, unless the Court determines that one or more of the following conditions are true:

- A party to a Friend of the Court case objects.
- A party is eligible for Title IV-D services because the party is receiving public assistance.
- A party is eligible for Title IV-D services because the party received public assistance and an arrearage is owed to the State of Michigan. The Friend of the Court records show that, within the previous 12 months, a child support arrearage or custody or parenting time violation has occurred in the case.
- Within the previous 12 months, a party has reopened a Friend of the Court case.
- There exists evidence of domestic violence or uneven bargaining positions and evidence that a party has chosen to close the case against the best interest of either the party or the party's child.

A Motion to Opt Out of Friend of the Court services must be filed and the Advice of Rights form signed by both parties. See the instructions below on how to file and serve the motion.

The Court will make a determination based upon the factors outlined above. If the Court grants the Motion to Opt Out, the Court will prepare the order exempting the case.

Completing the Motion

The Motion form (CC 326) must be completed in its entirety. It may be helpful to have previously filed court papers available to assist you. The case number, and party information will be listed on previous documents. If you do not know your case number, please contact the Friend of the Court office. **Please print neatly. If your handwriting is not legible, the form may be rejected.**

- The Motion title should be “Motion to Opt Out of the Friend of the Court Services.
- You are the Moving Party. Place your name on line 2.
- ***Before completing the “Notice of Hearing” portion, contact the Friend of the Court Scheduling Clerk at (989) 731-7462.*** You will need to provide your name and phone number, the other party’s name and your case number. Fill in the form with the name of the Judge or Referee who will be hearing your motion, the date of the hearing, the time of the hearing (include whether it is a.m. or p.m.), and the place of the hearing.

Note: All Referee Hearings will be held virtually, via Zoom. Zoom information (attached) must be included with the Notice of Hearing that is sent to the opposing party. Failure to attend the hearing may result in your Motion to Opt Out being dismissed.

- Under “Motion” describe in detail, why you are requesting to opt out of Friend of the Court services. Attach a separate sheet, if necessary.
- Date and sign the form.

Filing and Serving the Motion

1. Make three copies of the Motion (CC 326) and any attachments (one for you, the other party and the Friend of the Court). If there are attorneys of record or a third party/guardian, make additional copies.
2. Mail a copy of the motion with attachments to the other party and, if appropriate, attorneys of record or third party/guardian by first class mail. **The mailing date must be at least 9 business days (not including holidays) prior to the hearing date.**
3. Complete the Proof of Mailing (MC 302), by signing and writing the date that you **mailed** copies to the other party(ies).
4. File the original and Friend of the Court copy of the Motion (with attachments), Notice of Hearing and Proof of Mailing with the County Clerk’s office located at 225 West Main Street, Gaylord, Michigan 49735.

Note: A filing fee of \$20.00 will be required at the time of filing. Payment may be made with credit card, cash or check or money order (made payable to Otsego County Clerk).

If you can't afford to pay the fees, you may submit an Affidavit and Order – Suspension of Fees and Costs (Form MC 20). This form can be obtained from the Friend of the Court or County Clerk's office. If the Affidavit is approved by the Court, your filing fee may be waived.

Reopening a Case With the Friend of the Court

A party may elect to reopen their Friend of the court case at any time. A form packet that contains the necessary forms and information to reopen your case is available from the Friend of the Court office or on our website: www.otsegocountymi.gov/274/forms.

Contact the Friend of the Court office at (989) 731-7450 or the County Clerk's office at (989) 731-7500 if you have any questions regarding the instructions for filing and serving your motion.

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ADVICE OF RIGHTS REGARDING USE OF FRIEND OF THE COURT SERVICES (PAGE 1)	CASE NO.
Friend of the court address		Telephone no.

1. Right to Refuse Friend of the Court Services

- a. You have the right to refuse friend of the court services for custody, parenting time, and support. To decline friend of the court services, you must file with the court a motion requesting that friend of the court services not be required. You must attach a signed copy of this advice of rights to the motion. The court will grant the motion provided both parties agree and have signed this advice of rights and it determines that all the following are true.
- 1) Under MCL 552.505a, neither of you receives or has received public assistance or requests friend of the court services.
 - 2) There is no evidence of domestic violence or of an uneven bargaining position between you.
 - 3) The court finds that declining to receive friend of the court services is not against the best interests of a child.
- b. If you already have a friend of the court case, you can file a motion to discontinue friend of the court services provided both parties agree and have signed this advice of rights and the court finds that all the following are true.
- 1) Neither of you receives public assistance or requests friend of the court services.
 - 2) There is no evidence of domestic violence or an uneven bargaining position between you.
 - 3) The court finds that declining to receive friend of the court services is not against the best interests of a child.
 - 4) No money is due the governmental entity because of past public assistance.
 - 5) No arrearage or violation of a custody or parenting-time order has occurred in the last 12 months.
 - 6) Neither of you has reopened a friend of the court case in the last 12 months.

2. Friend of the Court Services (you will not receive these services if you choose not to use the friend of the court)

a. Accounting Services

Friends of the court must collect support and disburse it within 48 hours. Friend of the court accounting services include:

- 1) friend of the court accounting for payments received and sent,
- 2) adjustments of support for parenting time or other credits, and
- 3) annual statements of accounts, if requested.

b. Support Enforcement Services

The friend of the court must begin to enforce support when one month of support is overdue. For friend of the court cases, child-support enforcement services include:

- paying support out of tax refunds.
- asking the court to order the nonpaying party to come to court to explain the failure to pay.
- having unpaid support paid out of property the payer owns.
- reporting support arrearage to a consumer reporting agency or requesting that the payer's license(s) be suspended.
- collecting support by an income withholding order.

If you choose not to receive friend of the court services, any existing income withholding source will be notified that the friend of the court is no longer responsible for income withholding. **The parties will be solely responsible for stopping or changing income withholding as the law allows.** The friend of the court will stop any unfinished collection actions.

c. Medical Support Enforcement Services

The friend of the court is required to recommend how the parents divide health-care expenses and to take action to collect the amounts that a parent fails or refuses to pay. When a parent is required to insure the children, the friend of the court is authorized to instruct an employer to enroll the children in an insurance plan when the parent fails or refuses to do so.

d. Support Review and Modification Services

Once every three years, persons with friend of the court cases may request the friend of the court to review the support amount. After completing the review, the friend of the court must file a motion to raise or lower support, or inform the parties that it recommends no change. It must also review support when changed circumstances lead it to believe that support should be modified.

e. Custody and Parenting-Time Investigation Services

For disputes about custody or parenting time in friend of the court cases, the friend of the court sometimes must investigate and provide reports to the parties and the court.

f. Mediation Services

Friend of the court offices must provide mediation services to help parties with friend of the court cases settle custody and parenting-time disputes.

g. Custody and Parenting-Time Enforcement Services

For friend of the court cases, the friend of the court must enforce custody and parenting time when a party complains that it is violated. Child-custody and parenting-time enforcement services include:

(See page 2)

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ADVICE OF RIGHTS REGARDING USE OF FRIEND OF THE COURT SERVICES (PAGE 2)	CASE NO.
--	--	-----------------

Friend of the court address

Telephone no.

2. Friend of the Court Services (you will not receive these services if you choose not to use the friend of the court)

(continued from page 1)

g. Custody and Parenting-Time Enforcement Services (continued from page 1)

- asking the court to order the noncooperating party to come to court to explain the failure to obey the parenting-time order.
- suspending the licenses of individuals who deny parenting time.
- awarding makeup parenting time.
- joint meetings to resolve complaints.

3. Michigan State Disbursement Unit and IV-D Services

a. Michigan State Disbursement Unit (MiSDU)

If you choose not to receive friend of the court services, you may continue to make and receive child support payments through MiSDU. MiSDU will keep track of the amount paid and sent out. However, MiSDU cannot provide you with all the accounting functions the friend of the court provides. All payments made through MiSDU must be distributed according to the amounts due as required by federal law. When a payer has more than one case, federal law determines how a payment is divided among the cases. **Even if you choose not to receive friend of the court services, payments through MiSDU must be divided among all a payer's cases and distributed in the same manner as payments on friend of the court cases. You cannot discontinue friend of the court services if you want to use MiSDU unless you first provide to MiSDU all the information that MiSDU needs to set up an account.**

b. Your Rights Under Title IV-D of the Social Security Act

Title IV-D of the Social Security Act provides federal government resources to collect child support and it allows certain funding to be used for parenting-time and custody services. In Michigan, critical Title IV-D services are delivered by the friend of the court. **If you choose not to receive friend of the court services, you cannot receive most Title IV-D services.**

4. Public Assistance

Receipt of public assistance means receipt of any of the following benefits: cash assistance, medical assistance, food assistance, foster care, and/or child care.

ACKNOWLEDGMENT REGARDING SERVICES

Check below only if you do not want to receive friend of the court services. Then date, print name, and sign.

I have read this advice of rights and I understand the friend of the court services I am entitled to receive.

I acknowledge that by signing below **I am choosing not to receive** any friend of the court services. I understand that before this choice can take effect, a motion requesting this choice and the other party's agreement must be filed with the court for approval. I also understand that the court may deny this choice if certain conditions are not met as stated in this advice of rights.

Name (type or print)

Name (type or print)

Signature

Date

Signature

Date

If you did not check the above box, you are choosing to receive friend of the court services. For the most effective friend of the court services, you can request Title IV-D services by dating and signing below.

I request Title IV-D services through the friend of the court office.

Date

Signature

Original - Court file
1st copy - Assignment Clerk/Extra
2nd copy - Friend of the Court/Extra

3rd copy - Opposing party
4th copy - Moving party

Approved, SCAO

46th STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY

NOTICE OF HEARING AND MOTION

CASE NO.

Court address

800 Livingston Blvd., Ste. 1A, Gaylord MI 49735

Court telephone no.

989-731-7450

Plaintiff name(s)

Defendant name(s)

v

Plaintiff's attorney, bar no., address, and telephone no.

Defendant's attorney, bar no., address and telephone no.

NOTICE OF HEARING

1. Motion title: Motion To Opt Out Of The Friend of the Court Services

2. Moving party: _____

3. This matter has been placed on the motion calendar for:

Judge	Bar no.	Date	Time
Hearing location			
<input type="checkbox"/> Court address above	<input type="checkbox"/>		

4. If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

MOTION

Motion To Opt Out Of The Friend of the Court Services

I am requesting to opt out of the Friend of the Court services for the following reasons:

Date

Signature

Approved, SCAO

JIS CODE: POM

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT OTSEGO COUNTY PROBATE	PROOF OF MAILING	CASE NO.
---	-------------------------	-----------------

Court address 800 Livingston Blvd. Ste 1A, Gaylotd, Michigan 49735	Court telephone no. 989-731-7450
--	--

Plaintiff(s)	v	Defendant(s)
--------------	---	--------------

<input type="checkbox"/> Juvenile	In the matter of _____
<input type="checkbox"/> Probate	In the matter of _____

On the date below I sent by first-class mail a copy of _____

to: List names and addresses.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Signature

Name (type or print)

NOTICE REGARDING FILING FEES

Pursuant to Public Act 189, effective October 8, 1993, there will be a **\$20.00** filing fee for all motions. A check or money order made payable to the “**County Clerk**” in the amount of **\$20.00** must accompany any motion to be filed. Motions will **not** be filed unless this check or money order is included. Kindly attach it to the motion form and mail it to this office.

Anyone who claims to be indigent may secure an Affidavit of Indigency from their county clerk and submit it to the Judge assigned to their case for approval. If approved, the signed approval along with the affidavit should be attached to the motion in lieu of the check or money order. The Friend of the Court will make a copy for their records and forward the original to the court.

Approved, SCAO

Original - Court
1st copy - Plaintiff

2nd copy - Defendant
3rd copy - Friend of the court

STATE OF MICHIGAN
46th JUDICIAL CIRCUIT
OTSEGO COUNTY

ORDER EXEMPTING CASE FROM
FRIEND OF THE COURT SERVICES
(PAGE 1)

CASE NO.

Court address

800 Livingston Blvd., Suite 1A, Gaylord, Michigan 49735

Telephone no.

(989) 731-7450

Plaintiff's name, address, and telephone no.

Defendant's name, address, and telephone no.

v

Attorney:

Attorney:

Date of hearing: _____ Judge: _____ Bar no.

THE COURT FINDS:

1. There is no evidence of domestic violence or of an unequal bargaining position between the parties in the case.
2. Granting the parties the relief they have requested would not be against the best interests of any child in the case.
3. The parties have filed executed copies of a form advising them of services they will not receive if their motion is granted.
4. Neither party receives public assistance.
5. No money is due the governmental entity because of past public assistance in the case.
6. No arrearage or custody or parenting-time order violation has occurred in the last 12 months in this case.
7. Neither party has reopened a friend of the court case in the last 12 months.
8. The parties do not want Title IV-D services and have requested that any existing Title IV-D case be closed. (Note: This box should be checked unless exceptional circumstances exist that entitle the Title IV-D case to remain open.)

IT IS ORDERED:

9. Subject to the provisions of item 14 below, this case is not a friend of the court case.
10. This case is not a Title IV-D case. (Note: This box should be checked if item 8 has been checked.)
11. The friend of the court shall not be involved in the enforcement, investigation, or accounting functions for custody, parenting time, or support in this case.
12. The parties are responsible for all enforcement and accounting functions for custody, parenting time, or support in this case.

(See page 2 for the remainder of the order.)

Do not write below this line - For court use only

Approved, SCAO

Original - Court
1st copy - Plaintiff

2nd copy - Defendant
3rd copy - Friend of the court

STATE OF MICHIGAN
46th JUDICIAL CIRCUIT
OTSEGO COUNTY

ORDER EXEMPTING CASE FROM
FRIEND OF THE COURT SERVICES
(PAGE 2)

CASE NO.

Court address

800 Livingston Blvd., Suite 1A, Gaylord, Michigan 49735

Telephone no.

(989) 731-7450

Plaintiff's name

v

Defendant's name

13. Except as indicated below, there is no income withholding in this case, support will be paid directly by the payer to the payee, and the friend of the court shall terminate any existing income withholding. Should this case become a friend of the court case, the payer must keep the friend of the court advised of the name and address of the payer's source of income and any health-care coverage that is available to the payer as a benefit of employment or that the payer maintains, including the name of the insurance company, health-care organization, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the persons for whose benefit the payer maintains the coverage.
- a. Child support shall be paid through the Michigan State Disbursement Unit (MiSDU) by income withholding to the extent allowed by statutes and court rules; however, the friend of the court is not responsible for income withholding. The friend of the court shall notify the employer that it is no longer involved in the case and that any further information concerning income withholding will be provided by the parties.
- b. Child support shall be paid through MiSDU by the payer.
14. If child support payments are to be made through MiSDU by income withholding or otherwise, the friend of the court shall not close the friend of the court case until MiSDU notifies the friend of the court that it has been provided with the information necessary to process the child-support payments. There will be no accounting for support that is not paid through MiSDU.
15. The friend of the court shall open a friend of the court case if a party applies for or receives public assistance, a child is placed in foster care, or either party submits to the friend of the court a written request to reopen the friend of the court case. If this case becomes a friend of the court case for any reason, the following provisions shall apply.
- a. The parties must cooperate fully with the friend of the court in establishing the case as a friend of the court case.
 - b. The parties must provide copies of all orders in their case to the friend of the court.
 - c. The parties must supply any documents that a party to a friend of the court case is required to supply if they have not already done so.
 - d. The friend of the court is not responsible for determining any support arrearage that is not indicated by payment made through MiSDU.
 - e. Support is payable through MiSDU effective the date the case becomes a friend of the court case.
 - f. The friend of the court may prepare and submit, ex parte, a uniform support order that contains all the statutory requirements of a Michigan support order as long as the order does not contradict the existing support order.
 - g. At the request of the friend of the court, the parties shall complete a Verified Statement and Application for Title IV-D Services.

Date

Judge

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 3.203.

Date

Signature

46th JUDICIAL CIRCUIT COURT
OFFICE OF THE FRIEND OF THE COURT – OTSEGO COUNTY
800 Livingston Blvd., Suite 1A
Gaylord, Michigan 49735
989-731-7450

Pursuant to Federal Regulation, only IV-D cases are eligible for funding for many of the services the FOC offers. Your case is not a IV-D case and will not be eligible for these services. We want to be able to utilize all available resources to help you and your children. Below is an application for IV-D services. A signed copy of this application is needed to ensure compliance with Public Law 93-647/45CFR 302.22, Section 454(6) of the Social Security Act. **Please complete and sign the application and return it to this office today.**

APPLICATION FOR IV-D SERVICES

Case Number: _____

Your name: _____ Your Social Security Number: _____

Your address: _____

Your employer: _____

Your employer's address: _____

The other party's name: _____ The other party's SS#: _____

The other party's address: _____

The names, dates of birth and social security numbers of the minor children in this case:

Child's name	Child's Date of Birth
_____	_____
_____	_____
_____	_____
_____	_____

I request support services under the Support Enforcement Program of Title IV-D of the Social Security Act. If necessary, I request the use of Parent Locator Services. I understand that any information provided to me or on my behalf is to be used only for the purpose of securing child support.

Dated: _____ Signature (required) _____