

# Motion Regarding Custody

(Flowchart, Motion Regarding Custody, Custody Assessment Worksheet, MC 416, Proof of Service)

<b>When to Use:</b>	<ul style="list-style-type: none"> <li>You have an order regarding custody; <b>and</b></li> <li>There has been a significant change in circumstances; <b>and</b></li> <li>You believe it is in the best interests of the child or children to change the current custodial arrangement.</li> </ul>
<b>Filing Fees:</b>	\$100.00
<b>Method of Payment:</b>	Credit Card
<b>Where to File:</b>	<a href="https://mifile.courts.michigan.gov">https://mifile.courts.michigan.gov</a>
<b>Filing Type:</b>	Motion for Custody Assessment, Post Judgment
<b>Copies:</b>	Original, plus 1 additional copy if the other party does not have a MiFILE account.
<b>Additional Information:</b>	<p>You will need to have form MC 416 notarized before filing.</p> <p>You can serve this motion electronically if the other party has a MiFILE account. You will need to send a copy of this motion to the other party if he or she does <b>not</b> have a MiFILE account. You can send this motion by regular, first class mail.</p> <p>The Friend of the Court will schedule a diversion conference after you have filed this motion. The purpose of the diversion conference is to determine if the threshold to change custody has been met. See the attached flowchart for more information.</p> <p>If an investigation is ordered, there is a <b>\$300.00</b> fee assigned to one or both parties.</p> <p>You may purchase copies and stamped envelopes in the Legal Self-Help Center.</p>

# Custody Dispute Process – Prior Custody Order

Ottawa County

## Step 1: File Motion Regarding Custody

## Step 2: Attend Diversion Conference

FOC will schedule a diversion conference upon receipt of a motion regarding custody. If parties can successfully negotiate a resolution, a stipulated order should be prepared and submitted to the Court. If parties are unable to successfully negotiate a resolution, FOC will prepare a recommended order regarding the *Vodvarka* threshold/custody assessment. Objections to the FOC recommended order must be filed within 21 days from the date of mailing.

## Step 3: Court Decision on *Vodvarka* threshold

The court will decide if the FOC recommendation re: *Vodvarka* should be adopted. If an objection is filed, the court will also decide if a hearing is required.

### Step 4a: Assessment Recommended

A change in circumstances or proper cause has been established. (The *Vodvarka* threshold has been met.) FOC will conduct a custody assessment, pending the 21-day objection period. A hearing will be scheduled within 56 days. A custody investigation fee of \$300 may be assessed.

### Step 4b: Assessment Declined

A change in circumstance or proper cause has been established. (The *Vodvarka* threshold has been met.) A custody assessment is not required because:

- Issues are clear and both parties are represented by attorneys; **or**
- Other agencies are involved and there is sufficient evaluative information for the parties to rely on; **or**
- FOC has conducted prior investigations in the matter; **or**
- Age of the child.

A hearing will be scheduled.

### Step 4c: Assessment Denied

A change in circumstances or proper cause has not been established. (The *Vodvarka* threshold has not been met.) FOC will not conduct a custody assessment. No further action will be taken on the motion.

## Step 5: Custody Hearing

The court must determine if the proposed change will modify the established custodial environment of the child and if the change is in the best interest of the child.

## Step 6: Decision

The court must enter a decision within 28 days after the hearing.

## Step 2: Attend Diversion Conference

If there is a prior custody order, a party seeking a change, or modification, of a custody order must establish that there has been a change in circumstances or other proper cause, since entry of the last custody order, justifying a change in the child's established custodial environment. *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 N.W.2d 847 (2003). "The rationale ... [for this threshold] is to minimize unwarranted and disruptive changes of custody orders." *Corporan v Henton*, 282 Mich App 599, 603; 766 NW2d 903 (2009). Appropriate grounds for seeking modification should include at least one of the 12 statutory best-interest factors and must concern matters that have or could have a significant effect on the child's life.

## Step 3: Court Decision on *Vodvarka* threshold

The trial court need not hold an evidentiary hearing on this threshold determination unless there are factual disputes relevant to that determination. *Corporan*, 282 Mich App at 609. There is no error in conducting a single evidentiary hearing that encompasses: whether there exists proper cause or a change of circumstances as needed to modify custody; a determination of the child's established custodial environment, bearing on the burden of proof; an examination of the statutory best-interest factors; and a ruling on the custody motion. *Mitchell v Mitchell*, 296 Mich App 513, 517-518; 823 NW2d 153 (2012). The threshold determination may even be made by motion for summary disposition. *Ostrowski v Ostrowski*, unpublished per curiam opinion of the Court of Appeals (Docket No. 260880, Sept. 1, 2005).

## Step 4a: Custody Assessment Recommended

The FOC shall investigate all relevant facts and make a written report and recommendation to the parties and to the court regarding custody or parenting time or both, if ordered to do so by the court. MCL 552.505(1)(g). When custody of a minor is contested, a hearing on the matter must be held within 56 days after the court orders, or after notice of hearing, or after mediation. MCR 3.210(C)(1).

## Step 4c: Custody Assessment Denied

A hearing may be held if an objection to the denial is filed with sufficient factual allegations to justify a hearing.

## Step 5: Custody Hearing

### Determining the Burden of Proof: the Established Custodial Environment

"[W]hen considering an important decision affecting the welfare of the child, the trial court must first determine whether the proposed change would modify the established custodial environment (ECE) of that child. In making this determination, it is the child's standpoint, rather than that of the parents, that is controlling." *Pierron v Pierron*, 486 Mich 81, 92; 782 NW2d 480 (2010). An ECE exists 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 permanency of the relationship shall also be considered. MCL 722.27(1)(c).

Modifying a custody arrangement to alter an ECE requires the moving party to show by clear and convincing evidence that such a change would serve the best interest of the child. *Id.* If the requested change would not change the ECE, then only a preponderance of the evidence is required to show that the change would be in the child's best interests. *Id.*

### The Best Interest Factors

Custody disputes are to be determined on the basis of the best interests of the child, as measured by the 12 factors set forth in MCL 722.23. The "best interests of the child" means the sum total of these factors, to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or 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.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's 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 relevant to a particular child custody dispute.

### Joint Custody

Michigan law requires that the parents be advised of the availability of joint custody. MCL 722.26a(1). The court determines whether joint custody is in the best interests of the child by considering whether the parents will be able to cooperate and generally agree concerning the important decisions affecting the welfare of the child. *Id.*

## Step 6: Decision

MCR 3.210(C)(3)

<b>State of Michigan 20<sup>th</sup> Circuit Court – Family Division Ottawa County</b>	<b>Motion Regarding Custody</b>	<b>Case Number</b>
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**Court address:** 414 Washington Ave., Room 320, Grand Haven, MI 49417      **Court phone number:** 616-846-8315

**Plaintiff**

Name, address & phone number

moving party

**Defendant**

Name, address & phone number

moving party

Note: There will always be some changes in a child’s life. If you are asking for a change in custody, you must show that there have been **significant changes** (more than normal) in your child’s life.

1. A judgment or order regarding custody was entered (signed) on (date) \_\_\_\_\_.  
Custody was ordered as follows:

Child’s name	Age	PL = Plaintiff; DF = Defendant; JT = Joint			
		Legal Custody		Physical Custody	
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL <input type="checkbox"/> DF <input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL <input type="checkbox"/> DF <input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL <input type="checkbox"/> DF <input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL <input type="checkbox"/> DF <input type="checkbox"/> JT

2. A Uniform Custody Jurisdiction and Enforcement Act Affidavit (MC 416) is attached to this motion.
3. The child(ren) have been living with (names) \_\_\_\_\_  
at (complete address) \_\_\_\_\_  
since (date) \_\_\_\_\_.
4.  There are no other ongoing cases involving the parties in this case.  
 There is an ongoing  guardianship;  abuse/neglect;  Personal Protection Order (PPO) case involving the parties in this case. The case number is \_\_\_\_\_.

5. A change in custody is required because the following circumstances have changed:

6. It is in the best interests of the child(ren) to change custody. A completed custody assessment worksheet is attached to this motion.

I ask the court to enter an order regarding custody, parenting time, and support as follows:

### Custody

Child's name	Age	PL = Plaintiff; DF = Defendant; JT = Joint					
		Legal Custody		Physical Custody			
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT
		<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT	<input type="checkbox"/> PL	<input type="checkbox"/> DF	<input type="checkbox"/> JT

### Parenting Time

- Parenting time will be as the parties agree.  
 Other: \_\_\_\_\_.

### Support

- Child support will be according to the Michigan Child Support formula.  
 Other: \_\_\_\_\_.

The statements I made above are true to the best of my knowledge.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

# Custody & Parenting Time

## \*Custody Assessment Worksheet\*

The purpose of this worksheet is to obtain a comprehensive picture of your family and children, and to explain why custody should be changed. Complete the questions as fully and accurately as possible.

### Below is information pertaining to the 12 Factors of the Michigan Child Custody Act.

#### BOND

##### (A) The love, affection, and other emotional ties existing between the parties involved and the child.

Which party is bonded to the child/ren?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who does the child/ren look to for advice/problem?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who does the child/ren look to for comfort when hurt or ill?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party can separate their own needs from the needs of the child/ren		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who is readily available to attend to the child/ren's needs		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
How does the party connect to the child/ren?		How much time does the party spend with the child/ren each day when in their care? (consider school, daycare, activities, etc)		
You	Other Party	You	Other Party	
How often do you bath the child/ren, put the child/ren to bed, and read the child/ren stories when in your care?		Additional Comments		
You	Other Party			

#### GUIDANCE AND RELIGION

##### (B) The capacity and disposition of the parties involved to give the child/ren love, affection, and guidance and to continue the education and raising of the child/ren in his or her religion or creed, if any.

Who stays home from work if the child/ren are sick?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who handles school and homework issues?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who handles sports and other activities?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who takes the child/ren to church or other religious activities?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
Who involves the child/ren with extended family such as grandparents, aunt, uncles, cousins, etc.?		<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
How does each party handle discipline?		Additional Comments		
You	Other Party			

**FINANCES AND CHILD/REN'S HEALTHCARE**

**(C) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care.**

**FINANCES**

Who buys clothes, toys, food, etc. for the child/ren?  You  Other Party  Both

Who attends to any special needs of the child/ren?  You  Other Party  Both

Who has flexibility in their work hours?  You  Other Party  Both

Who arranges for childcare for the child/ren?  You  Other Party  Both

How stable is the job of each parent? What is the earning capacity of each parent?

You	Other Party	You	Other Party
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**MEDICAL**

Who can provide health insurance for the child/ren?  You  Other Party  Both

Who arranges for and takes the child/ren to the doctor/dentist?  You  Other Party  Both

Who stays home or takes care of the child/ren when sick?  You  Other Party  Both

Who buys the child/ren's clothing?  You  Other Party  Both

Who oversees immunizations?  You  Other Party  Both

Additional Comments

**RESIDENCE HISTORY & DETAILS**

**(D) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.**

How many times has each party you moved since the separation?	You	Other Party
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When is the last time each party moved homes?	You	Other Party
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Who has provided the child/ren a stable, secure, and safe home environment?  You  Other Party  Both

Who can provide stability for the child?  You  Other Party  Both

If either party has moved in the last year, how has the child/ren adjusted to the move, if any?  N/A  
If yes, please explain:

Additional Comments

**PERMANENCE OF FAMILY UNIT**

**(E) The permanence, as a family unit, of the existing or proposed custodial home or homes.**

**Who lives in each parent's home?**

Your Home			Other Party's Home		
Name	Age	Relationship to You	Name	Age	Relationship to You

**CHILD PROTECTIVE SERVICES, CRIMINAL RECORD, & SUBSTANCE ABUSE**

**(F) The moral fitness of the parties involved.**

<b>This party has been involved with Children's Protective Services (CPS).</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
<b>The party had an extra marital affair the child/ren knew about.</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
<b>The party has a criminal history.</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
<b>The party has a history of alcohol abuse.</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
<b>The party has a history of substance abuse (drugs).</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither

**Additional Comments (If yes for either party above, please explain here.)**

**HEALTH RELATED**

**(G) The mental and physical health of the parties involved.**

<b>The party has a physical health condition that impacts their ability to provide care for the child/ren.</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
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If yes, please explain

<b>The party has a mental health condition that impacts their ability to provide care for the child/ren.</b>	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both	<input type="checkbox"/> Neither
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If yes, please explain

**CHILD/REN'S BEHAVIOR****(H) The home, school, and community record of the child.**

The party attends school conferences.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party makes sure the child/ren sees and talks to their friends.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party supervises the child/ren's home responsibilities, like chores.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party helps the child/ren with homework.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The child/ren regularly attend school when in the care of the party.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both

<b>How does the party encourage and influence attendance at school?</b>		<b>Additional Comments</b>
You	Other Party	

**CHILD/REN'S PREFERENCE****(I) The reasonable preference of the child if the court considers the child to be of sufficient age to express preference.**

\*Parents are discouraged from discussing custody matters with children. Directly asking a child his/her preference and sharing adult information may cause the child an undue hardship. Please be sensitive to your child's needs and don't place him/her in the middle of the dispute.

**CO-PARENTING****(J) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. A Court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.**

The party cooperates with the parenting time schedule.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party criticizes the other parent in front of the child/ren.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party encourages a relationship between the child/ren and the other parent.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party has allowed the other party additional parenting time, above what the court order states.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both
The party has denied the other party parenting time and/or withheld the child/ren from the other party.	<input type="checkbox"/> You	<input type="checkbox"/> Other Party	<input type="checkbox"/> Both

<b>What do you think is the ideal amount of time the other parent should have with the child/ren?</b>	<b>Additional Comments</b>
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<b>STATE OF MICHIGAN</b> <b>20<sup>th</sup> Circuit Court</b> <b>Ottawa County</b>	<b>PROOF OF SERVICE</b>	<b>CASE NO.</b>
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**Court Address:** 414 Washington Ave., Grand Haven, MI 49417

**Court Phone Number:** 616-846-8315

**Plaintiff**

Name, Address, & Phone Number

**Defendant**

Name, Address, & Phone Number

**V**

I, \_\_\_\_\_, hereby state that on (date) \_\_\_\_\_,  
I mailed a copy of the following documents to the opposing party or the opposing party's attorney at the address in the caption above.

- Motion Regarding Custody
- Custody Assessment Worksheet
- Uniform Child Custody Jurisdiction Enforcement Act Affidavit (MC 416)
- Other: \_\_\_\_\_

Date: \_\_\_\_\_ Signed: \_\_\_\_\_