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**DATE: November 27, 2002**

**TO: ALL CHIEF CIRCUIT JUDGES**  
**cc: FAMILY DIVISION JUDGES**  
**FRIENDS OF THE COURT**  
**FAMILY DIVISION ADMINISTRATORS**  
**CIRCUIT COURT ADMINISTRATORS**

**FROM: John D. Ferry, Jr., State Court Administrator**

**SUBJ: SCAO Administrative Memorandum 2002-11**  
**Guidelines for Enforcement of Custody and Parenting Time Violations**

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Section 19 of the Friend of the Court Act (MCL 552.519) provides that the State Court Administrative Office, Friend of the Court Bureau, shall develop and recommend guidelines for conduct, operations, and procedures for friend of the court offices. The act further requires that the State Court Administrative Office, Friend of the Court Bureau “[i]n consultation with the Domestic Violence Prevention and Treatment Board...develop guidelines for the implementation of section 41 of the Support and Parenting Time Enforcement Act ... that take into consideration ... (i) domestic violence. (ii) safety of the parties and child. (iii) uneven bargaining positions of the parties.” The Friend of the Court Act also requires that each friend of the court take all necessary steps to adopt office procedures to implement the act, supreme court rules, and the recommended policy and procedures of the State Court Administrative Office, Friend of the Court Bureau. MCL 552.503(6). Section 41 of the Support and Parenting Time Enforcement Act requires the implementation of the remedies for a parenting time violation pursuant to guidelines developed by the State Court Administrative Office, Friend of the Court Bureau.

This policy outlines the steps friend of the court offices should take in enforcing custody and parenting time violations. The policy replaces Friend of the Court Policies and Procedures Memo 1983-1. Should you have any questions regarding this policy, you may contact **Steve Capps** at [cappss@courts.mi.gov](mailto:cappss@courts.mi.gov) or (517) 373-4835.

## **Custody and Parenting Time Violation Enforcement Policy**

Friends of the court shall enforce parenting time according to the following guidelines on friend of the court cases.

### **A. Custody or Parenting Time Complaint.**

#### **1. Violation of custody or parenting time order.**

A custody or parenting time order violation is any act or failure to act that interferes with a parent's right to interact with a child as governed by the court order [MCL 552.602(e)]. This includes a custodial parent's violation of parenting time provisions, and a noncustodial parent's violation of custody or parenting time provisions.

#### **2. Timing.**

When a custody or parenting time violation occurs, a parent should file a complaint with the friend of the court within 56 days after the alleged violation.<sup>1</sup> The friend of the court has discretion to decline to enforce parenting time complaints that are filed more than 56 days after the alleged violation.

#### **3. Content.**

The complaint must be in writing to allow a copy of it to be sent to the other parent. At a minimum the complaint should state the date of the violation, the custody or parenting time that the order allowed, and a summary of the facts that the complaining party alleges constitute a violation of the custody or parenting time order. The party's statement should be in the form of an affidavit as required by MCR 3.606 to allow it to be used later in the event contempt proceedings are necessary.

#### **4. Assisting litigants.**

State law requires the friend of the court to assist parents in preparing the custody or parenting time violation complaints if a parent requests assistance [MCL 552.511b].

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<sup>1</sup> The time frame for filing the complaint may be determined from the date a violation first occurs or the last date for which parenting time could have occurred for the period in which the violations occurs. The better policy is to require a complaint to be filed within 56 days of the date the violation first occurs. Each office should clearly establish the method it will use and advise the public of the method it will use.

## **B. Review of Complaint.**

### **1. Determining sufficiency of complaint.**

The friend of the court should review the complaint filed in section A to determine whether the allegation sets forth a violation of the court order. If the complaint alleges a violation of the court order, the friend of the court must take action to enforce it. If the court order does not specifically address the issues in the complaint, the friend of the court has discretion not to take enforcement action.

Often, the meaning of an order is subject to interpretation. For instance, the order may provide that a parent is to have “reasonable parenting time”. Such an order is entirely subjective from the standpoint of what the parenting time should be.<sup>2</sup> However, even from this language it is clear that the court contemplated that parenting time occur. Under the circumstances, the enforcement remedy may be different depending on whether the parent was denying parenting time altogether or whether the parties could not agree concerning what constituted reasonable parenting time.

### **2. Timeliness.**

The complaint must be filed within 56 days of the date of the violation. If it is not, the friend of the court may exercise its discretion not to enforce the complaint.

### **3. Eligibility for enforcement.**

If all three of the following conditions exist, the friend of the court has discretion not to enforce the complaint:

- a. the party complaining has filed two or more complaints that have been determined by the court to be unwarranted,
- b. the party complaining has been assessed sanctions as a result, and
- c. the party complaining has not paid those sanctions.

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<sup>2</sup> There may be local policies that help define the term “reasonable parenting time”. Highly specific terms governing the exercise of custody and parenting time rights are recommended as a means of avoiding disputes in cases where the parties have difficulty cooperating to reach agreement. In cases involving domestic violence or child abuse, specific terms can further promote safety of the child and the parties by minimizing opportunities for manipulation of the court’s order. For further discussion, see Friend of the Court Domestic Violence Resource Book, Sec. 4.6 (MJI, 2001).

### **C. Sending Out Notice.**

Within 14 days of the date the office receives a complaint, it must send out a copy of the complaint to each of the parents. If the office is able to determine what remedy it will apply in response to the complaint it may send out the paperwork initiating the remedy chosen at the same time. If the office cannot determine whether the complaint alleges a custody or parenting time order violation it may send out copies of the complaint within 14 days after receiving the complaint and notify the parties that it will await further information from the parties before acting on the complaint. If the office determines that it will not act on an alleged custody or parenting time order violation for a reason allowed by statute, it shall send out copies of the complaint to each of the parties within 14 days and notify the parties that no further action will be taken.

### **D. Determining Action.**

The friend of the court has discretion to use any of the enforcement remedies available for a parenting time violation. Unless a remedy is clearly inappropriate, the remedies should be applied in the order they are listed below. A remedy may be inappropriate based on factors inherent to the case or based on factors related to the local office's determination of how it allocates resources among cases to provide a specific remedy.

Selection of an enforcement remedy should also be influenced by the safety concerns that arise when one party has committed a crime against a child or the other party, or has violated another court order (such as a personal protection order) in exercising or asserting custody or parenting time rights. Cases in which parties are unable to adequately represent their own interests require special consideration to ensure fairness. The parties' ability to represent their own interests may be impeded by factors such as undue influence, substance abuse, mental illness, and domestic violence.<sup>3</sup> In cases involving domestic violence, safety concerns arise in addition to questions of

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<sup>3</sup> Domestic violence is a pattern of behavior used to control an intimate partner. Some abusive behavior is criminal; it may include physical or sexual assault, emotional abuse, isolation, economic coercion, threats, stalking, and intimidation. Abuse may be directed at an intimate partner's property, pets, family members, or associates, as well as at the partner. See Batterer Intervention Standards for the State of Michigan, Sec. 4.1 (Governor's Task Force on Batterer Intervention Standards, Jan. 20, 1999). The State Court Administrative Office has encouraged use of the Standards by courts making referrals for treatment after conviction of misdemeanor domestic assault. See SCAO Administrative [Policy Memorandum 1999-01](#). The following may indicate domestic violence is a factor in the case:

- A civil or criminal court in Michigan or another jurisdiction has issued an order with protective conditions prohibiting contact between the parties.
- A child abuse or neglect proceeding is pending in any jurisdiction involving a child of either of the parties.
- A party has filed a sworn statement with the Friend of the Court setting forth specific incidents or threats of physical violence or child abuse from the other party.
- The case has been exempted previously from mediation or conciliation.
- Repeated violation of court orders.

fairness. Efforts to promote safety in these cases will be most effective if they focus on the protection of the abused individual and children, and on intervention in the abusive parent's manipulation and control tactics.<sup>4</sup> This focus will help the court to address the underlying basis for the problems caused by domestic violence in the case, rather than on the parenting time symptoms that arise from the violence. Other ways to promote safety include:

- Minimize physical or other contact between the parties, and thus opportunities for threats, harassment, or physical violence.
- Adhere to any prior court orders restricting contact between the parties. Such orders may have been issued in criminal or civil cases in Michigan or another jurisdiction (Michigan courts must extend full faith and credit to protection orders issued in civil and criminal cases in other U.S. jurisdictions. See MCL 600.2950h, 600.2950j).
- Communicate clearly with the parties about court processes, particularly with regard to the limits of confidentiality. Abused individuals need to know what use will be made of their disclosures of domestic violence in order to take safety precautions against potential retaliatory violence, which is often precipitated by such disclosures.
- Refer abused individuals to domestic violence service agencies that can assist with safety planning.<sup>5</sup>

### **1. Makeup parenting time.**

Makeup parenting time is used to substitute future parenting time for denied parenting time. Each office is required by statute to have a makeup parenting time policy. The SCAO promulgated a model policy in 1983 but it is now outdated because of statutory changes. A new model policy is attached as Appendix A.<sup>6</sup> The process for applying makeup parenting time is to send a notice advising the parties that makeup parenting time will be applied unless the parties object within 21 days. If neither party objects, the makeup parenting time is applied with the parties keeping track of the substitute days. Normally the parenting time is of the same type missed (such as a weekend for a weekend, a weekday for a weekday, a holiday for a holiday). The makeup parenting time must be taken within one year of the denial.

Makeup parenting time is normally used as a remedy for violations that are not likely to recur. For instance, makeup parenting time is an ideal remedy for a case in which a parent was late in getting the child home which prevented the other parent from picking up the child.

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<sup>4</sup> For discussion of case management procedures in cases involving domestic violence, see Friend of the Court Domestic Violence Resource Book, ch 2 (MJI, 2001).

<sup>5</sup> A list of local domestic violence service agencies can be found at Domestic Services, at the MDHHS website, and additional information at the MDHHS Domestic & Sexual Violence webpage. Information about local service agencies can also be found by calling the National Domestic Violence Hotline at 800-799-SAFE (7233).

<sup>6</sup> Courts that adopted the old model policy by administrative order will need to rescind the old order.

If the parenting time denial is severe, makeup parenting time is not usually a good remedy. For instance, makeup parenting time is not appropriate when the custodial parent has frequently denied parenting time and is likely to do so in the future. Using makeup parenting time in such a circumstance merely postpones the ultimate resolution of the issue. Makeup parenting time is usually not a good remedy for large amounts of denied parenting time such as a summer parenting time because of the time it will take to implement.

Makeup parenting time is also not a good remedy for cases involving domestic violence because it does not address the underlying dynamic of power and control. For example, if an abused parent's denial of parenting time is motivated by a fear of violence at the hands of the abusive parent, a grant of makeup parenting time to the abusive parent may reward and encourage the abusive behavior that originally caused the denial of parenting time. If the abusive parent is denying the abused parent access to the child, a grant of makeup parenting time may only perpetuate the circumstances giving rise to the abuse. A more effective response in these situations will focus on providing safety to the abused parent and children, and on intervention in the abusive parent's control tactics.

## **2. Joint meetings.**

Because of the safety concerns arising from the presence of domestic violence in a case, joint meetings must only be conducted by a person who has completed the domestic violence training course offered by the SCAO. Joint meetings may be used for two purposes. They may be used to allow the parties to settle a conflict and to allow the FOC to gather information to make a recommendation to the court. Joint meetings may be conducted by phone, by other telecommunications equipment, or in person. While it is not a preferred practice in most cases, the parties may have their lawyer present for the joint meeting.

The parties must be advised at the beginning of the meeting that the purpose of the meeting is to attempt to reach an accommodation between the parties concerning the complaint. The parties must also be advised that communications made during the joint meeting are not confidential, and that the individual conducting the joint meeting may recommend an order to the court to resolve the complaint. If the parties agree to a resolution of the complaint, the friend of the court must prepare a written summary of the agreement, provide it to each party and submit an order to the court to adopt the agreement if it meets with the court's approval.

In the event the parties do not reach an agreement, the individual conducting the joint meeting may submit a recommendation for an order to the court with notice to each of the parties that the court will consider the recommendation for entry as an order unless one of them objects. The notice must also advise the parties that they may waive objection by returning a signed copy of the recommendation. The notice must inform the parties where the objection must be submitted. The notice normally should be filed with the clerk. It is also recommended that the parties be advised to file any objection with the clerk so that a permanent docket entry can be made of the date any objection is received. If neither party

objects, the court will consider the recommendation and enter an order if it approves of the recommendation.

Joint meetings should be used to resolve minor parenting time complaints that are likely to recur if they are not resolved by an agreement or court order, but which may not merit a contested motion hearing to modify the order. A good use of a joint meeting would be to resolve a dispute between the parties regarding the proper time to pick up or return a child, or whether a child on weekend parenting time must be returned on a Sunday before a Monday holiday parenting time. Similarly, the joint meeting might be used to resolve disputes concerning providing, or returning, clothing for parenting time, or for minor schedule modifications.

Joint meetings are also useful when the friend of the court is doing an investigation on the case and the submission of an order after the initial meeting is a possible way of reducing the time and labor on the case. However, the joint meeting is not useful if the issues are complex and are likely to require a full investigation. As the complexity of the issues increase, the staff member conducting the joint meeting should have more training with the most complex issues handled by investigators and mediators.

Joint meetings should be approached with caution in cases in which domestic violence is suspected or present. Because of the dynamic of power and control that exists in these cases, careful consideration should be given to whether a fair outcome is possible. Additionally, serious safety concerns arise from joint meetings in which the abusive party will have physical proximity and access to the abused party. If a joint meeting is conducted and the meeting facilitator suspects that a party's safety may be compromised, the joint session should be discontinued. In doing this, the facilitator can help to prevent reprisals against the abused party by not telling the suspected abusive party that the meeting was discontinued because of suspected domestic violence. After discontinuing the joint session, the facilitator should meet with the parties separately, starting with the suspected abused individual to give this person an opportunity to leave the courthouse safely during the later interview with the suspected abusive party. During the separate meetings, efforts to gather information about the suspected violence might be made. Note that it is important to inform individuals who may be abused about the limits of confidentiality to enable them to safety plan. Safety planning can also be facilitated by referring abused individuals to local domestic violence service agencies. In cases with an imminent threat of violence, law enforcement officials should be called upon to provide protection.<sup>7</sup>

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<sup>7</sup> Suggestions for safe termination of a joint meeting can also be found in the [Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts](#) (June, 2014).

In a few cases involving domestic violence, a joint meeting process with protective conditions might be feasible to address uncomplicated issues that do not merit a contested motion hearing or show cause proceeding. Protective conditions for joint meetings in these situations are:<sup>8</sup>

- Both parties must give informed consent to the meeting.
- The meeting must proceed without violating any provisions restricting contact between the parties that are contained in any order issued by a previous court in a criminal, personal protection, or other action involving the parties, whether issued in Michigan or another jurisdiction.
- Separate meeting times and/or locations must be scheduled for each party, if one party requests it. In this case, neither party should be informed as to the time or location of the other party's separate meeting.
- Telephonic meetings must be scheduled, if one party requests it.
- If both parties are represented by counsel, counsel for both parties are permitted to attend the joint meeting sessions.<sup>9</sup>

Joint meetings normally should not be used when the parties have unequal bargaining positions. Unequal bargaining positions may occur because of a person's mental, physical, or emotional health. Inequality may also occur because of the presence of other persons (such as a controlling new spouse or paramour). When a party's conditions indicate that one of these (or similar) elements exist, the joint meeting is not appropriate. The meeting should not be used for attempting to resolve the complaint, but rather for fact gathering in order to make a recommendation to the court for further screening and assessment in an appropriate case (substance abuse for instance) or the meeting should be discontinued.

Sometimes the unequal bargaining position is caused by unequal access to financial resources, legal assistance, or education. In these circumstances the joint meeting can be a way of minimizing the unequal bargaining position by giving the parties access to a person who can assist in gathering information that is necessary to resolution of the dispute but which the disadvantaged party might not otherwise be able to provide. The person

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<sup>8</sup> Further discussion of conditions to accommodate safety concerns in cases involving domestic violence is found in the Domestic Violence Screening Protocol referenced in footnote 7.

<sup>9</sup> Normally, attorneys would not be encouraged in a joint meeting. However, the presence of an attorney in domestic violence cases may help neutralize the issues of control and make the meeting more useful. If only one party has an attorney, the joint meeting may not be appropriate if it produces an uneven bargaining position. It is sometimes suggested that the presence of domestic violence advocates or other support persons may assist the abused party in a case. As more outside persons become involved in a case, the case becomes more complicated for the person conducting the joint meeting. Other questions such as confidentiality of friend of the court records, safety of the third persons, and the role of the third person in the meeting would need to be addressed. Because the joint meeting is designed to be a means of resolving a parenting time complaint that is less complicated than a full investigation or mediation, it is recommended that another remedy be used if a person is not comfortable having a joint meeting without the presence of third persons.



conducting the meeting should be careful, however, to be certain that the meeting is not conducted in a manner to attempt to compensate for either party's real or perceived unequal bargaining position, nor to represent either party's interest.

### **3. Show cause.**

Show cause proceedings are instituted by the friend of the court to require a person who is alleged to have violated an order to come into court and explain why the court should not impose sanctions. The procedure is initiated by filing a motion with the court alleging the existence of an order and providing a copy of a party's complaint that it has been violated. The party's statement should be in the form of an affidavit as required by MCR 3.606. Once the motion is filed, the court will enter an order directing the alleged violator to appear before the court and show cause why the alleged violator should not be found in contempt. The court will find a person in contempt if the order was violated without good cause. Good cause includes consideration of the safety of a party or child.

If the court finds a party in contempt, the court can impose the following sanctions:

- a. Change the order to add additional terms or conditions consistent with the existing order;
- b. Modify the order to meet the best interests of the child if requested by a party on a proposed modification of parenting time, and after notice to both parties and a hearing;
- c. Order makeup parenting time in an amount at least as much as that denied;
- d. Order the parent to pay a fine of not more than \$100.00;
- e. Commit the parent to jail for up to 45 days for a first offense or up to 90 days for subsequent offenses with or without the privilege of leaving jail to attend employment;
- f. Suspend the parent's occupational, driver's, or recreational or sporting license conditioned upon noncompliance with an order for makeup and ongoing parenting time; and
- g. Order the parent to participate in a community corrections program.

Upon finding that a party has acted in bad faith, the court must order a sanction of not more than \$250.00 for the first time, not more than \$500.00 for the second time, and not more than \$1000.00 for the third time the court finds the party acted in bad faith [MCL 552.644(6)]. The sanction applies equally to the party bringing or defending the dispute. The sanctions are used to fund friend of the court services not covered by title IV-D. These sanctions can be collected through garnishment (but not through income withholding) or any other method used to collect a judgment.

In addition to sanctions, the court must order a party who has acted in bad faith to pay the other party's costs. There is no statute or court rule authorizing the costs to be paid through the friend of the court nor for the friend of the court to collect or enforce those costs.

Normally, show cause proceedings are the preferred remedy when it is clear that a party is attempting to circumvent the order instead of an unintentional violation of the order. This can be determined by the statements of the parties, their response to a joint meeting, or by the presence of frequent disputes over parenting time.

When other remedies are possible, but the person enforcing the order believes that court imposed contempt remedies are likely to be more effective at addressing the issues between the parties, the show cause process is the preferred remedy.

#### **4. Modification of parenting time.**

The friend of the court may move the court to modify parenting time. If it does so, it must first conduct an investigation commensurate with the issues to be decided. This means that a major change in the order may require an investigation into all facets of the parties' relationship and a consideration of all factors. A minor change in the order (such as a change in the time a party picks up a child) may only require a brief phone conversation with the parties concerning their schedules.

When the friend of the court makes a recommendation, it can send out a proposed order with the recommendation with a notice that, if neither party objects within 21 days, the order will be entered. If a party objects the friend of the court must set a hearing on the recommendation. If neither party objects and the court approves the order, the court will enter the order.

This remedy is the most time-consuming and should rarely be used except where it is clear that the existing order will not work for the parties for reasons other than their unwillingness to comply with the order. In certain circumstances in which one of the parties will not comply with the order, the friend of the court could recommend a change in the order, but, normally, the same remedy can be granted after a show cause proceeding.

This remedy may also be effective in addressing situations in which domestic violence or unequal bargaining positions are present which cannot be addressed through less intrusive enforcement measures.

## Appendix A

### Makeup Parenting Time Model Policy

The circuit court bench strongly believes that it is important for a child to have a good relationship with both parents and has, therefore, adopted a makeup parenting time policy.

The friend of the court will apply this makeup parenting time policy in all cases where one parent has wrongfully denied parenting time to the other and the friend of the court determines that makeup parenting time is the appropriate method of enforcement. Court orders, joint meetings, mediation, and contempt proceedings are alternative methods of enforcement available to the friend of the court.

Parenting time is every child's right. Responsible parents will put individual differences aside and deal with each other in good faith to see that parenting time is encouraged. The following explanations by a parent for denying parenting time are generally not valid:

1. The child(ren) has a minor illness.
2. The child(ren) had to go somewhere else.
3. The child(ren) was not home.
4. The noncustodial party is behind in support.
5. The custodial parent did not want the child(ren) to go.
6. The weather was bad.
7. The child(ren) had no clothes to wear.
8. The child(ren) refused to go.
9. The other party failed to meet preconditions unilaterally established by the party allegedly denying parenting time.
10. Religious reasons.

Examples of explanations which may be valid are:

1. That the noncustodial parent was drinking or using drugs.
2. That the noncustodial parent failed to arrive for parenting time within one half hour of the time specified in the order.

#### **Determination of valid claim.**

The friend of the court must first determine if the alleged violation states something which is enforceable under the court's parenting time order. If the friend of the court finds that it does, it must send the following notice as required by MCL 552.642(2):

**FAILURE TO RESPOND IN WRITING TO THE OFFICE OF THE FRIEND OF THE COURT WITHIN 21 DAYS AFTER THIS NOTICE WAS SENT SHALL BE CONSIDERED AS AN AGREEMENT THAT PARENTING TIME WAS WRONGFULLY DENIED AND THAT THE MAKEUP PARENTING TIME POLICY ESTABLISHED BY THE COURT WILL BE APPLIED.**

As required by MCL 552.642(3), the party sent the notice must respond in writing to the friend of the court office within 21 days after the office sends the notice to prevent application of makeup parenting time.

**Procedure after response or the time for response passes.**

If the responding party timely provides a response, the friend of the court shall initiate one of the other enforcement methods available under MCL 552.641.

If a written response is not provided to the friend of the court within 21 days of when the notice was sent, the friend of the court shall apply makeup parenting time as set forth in MCL 552.642(1):

- a. That makeup parenting time shall be at least the same type and duration of parenting time as the parenting time that was denied, including but not limited to weekend parenting time for weekend parenting time, holiday parenting time for holiday parenting time, weekday parenting time for weekday parenting time, and summer parenting time for summer parenting time.
- b. That makeup parenting time shall be taken within 1 year after the wrongfully denied parenting time was to have occurred.
- c. That the wrongfully denied parent shall choose the time of the makeup parenting time.
- d. That the wrongfully denied parent shall notify both the office of the friend of the court and the other parent in writing not less than 1 week before making use of makeup weekend or weekday parenting time or not less than 28 days before making use of makeup holiday or summer parenting time.