

## Form FOC 109

# MOTION REGARDING PAYMENT PLAN/DISCHARGE OF ARREARS

### Use this form if:

- you have a support order and your support is in arrears; **and**
- you want the court to establish a payment plan that qualifies your case for relief from a portion of the support arrears; **or**
- you and the recipient of support want the court to order relief from some or all of the support arrears as agreed to between you and the recipient of support.

## MOTION CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

### DID YOU . . .

1. Fill out all requested information on the form? YES
2. Make all necessary copies? YES
3. Pay the motion fee to the clerk? YES
4. Mail (serve) a copy of the motion on the other party and on any other custodian/guardian after the judge and hearing date were assigned to your case by the clerk? YES
5. Mail (serve) a copy of the motion on the Office of Child Support if the arrearage is owed to the State of Michigan? YES
6. Return to the clerk's office **after** you mailed the motion and notice of hearing to the other party and completed the certificate of mailing? YES
7. Keep one copy of the motion and notice of hearing form for yourself? YES
8. Give two copies of the completed form to the clerk of the court? YES

If you cannot answer "yes" to all the above steps, a hearing on your motion may be delayed or your motion may be dismissed.

By using this form packet you are representing yourself in a court action regarding a payment plan/discharge of support arrears. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the order you get from the court may not give you the relief you want.

**If you have any questions about any steps in the process, refer to pages 3 through 5 of this booklet for details.**

## **INSTRUCTIONS FOR USING FORM FOC 109 FILING A MOTION AND SERVING A MOTION**

### **»» FILING A MOTION**

#### **1. Fill out the Motion form.**

Use the instructions on page 6. Be careful not to make mistakes.

Before filling out the "Notice of Hearing" part of the form, contact the friend of the court office to find out whom to contact about getting a hearing date. Then contact the person or office as directed by the friend of the court office. Fill in the form with the information you get about the hearing date, location of hearing, and name of the judge or referee who will be hearing the motion. NOTE: When any part of the arrearage is owed to the State of Michigan or a political subdivision, the hearing will be scheduled at least 56 days from the filing of the motion.

**Make at least five copies of the form after you have filled it out.**

#### **2. File the Motion form with the county clerk.**

Take the original and five copies of the form to the county clerk in the county where your case is located.

You must pay a \$20.00 motion fee. If you can't afford to pay the motion fee, ask the county clerk for an Affidavit and Order, Suspension of Fees/Costs (form MC 20 not included in this packet) to fill out.

The county clerk will write the name of the judge assigned to your case on your form. The clerk will keep the original and one copy of the motion and any attachments for the court file and the friend of the court. Then the clerk will return four copies and remaining attachments to you. Do not lose them.

What you should have when you leave the clerk's office:

- One copy of FOC 109 (with any attachments) - for you
- One copy of FOC 109 (with any attachments) - for the other party
- One copy of FOC 109 - for proof of service to the court
- One copy of FOC 109 - for proof of service to the friend of the court

### **»» SERVING THE MOTION ON THE OTHER PARTY OR PARTIES AND THE OFFICE OF CHILD SUPPORT OR THE POLITICAL SUBDIVISION**

#### **1. a. Serve the Motion and Notice of Hearing on the other party.**

The other parent or other party (if there is a custodian or guardian other than a parent) must be served with (notified of) the motion and hearing date at least 9 days before the hearing date.

**NOTE:** Serve the papers by mailing them to the other party by first-class mail.

**1. b. Serve the Motion and Notice of Hearing on the Office of Child Support or the Political Subdivision.**

If any part of the arrearage is owed to the State of Michigan or a political subdivision, the Office of Child Support or the political subdivision must be served with (notified of) the motion and hearing date at least 56 days before the hearing date.

**NOTE:** Serve the papers by mailing them to the Office of Child Support or the political subdivision by first-class mail.

**What you need for service:**

One copy of FOC 109 (with any attachments) - for the other party

One copy of FOC 109 (with any attachments) - for the Office of Child Support or the political subdivision when applicable

Two copies of FOC 109 - for proof of service

Any additional copies of FOC 109 (with any attachments) - for other custodian or guardian if there is someone other than the other parent who has care or custody of the child(ren).

Mail one copy with attachments to the other party. If there is a custodian or guardian, mail one copy and the attachments to him/her. If the Office of Child Support must be served, mail one copy and the attachments to OCS Central Operations, Arrears Payment Plan Review Unit, PO Box 30744, Lansing, Michigan 48909-8250. Then fill out the Certificate of Mailing on the front of the remaining three copies. Keep one copy for your own records.

**2. Return to the county clerk.**

Once you have mailed the motion and notice of hearing and filled out the Certificate of Mailing on the remaining three copies, return to the county clerk's office with two copies. Remember to keep one copy for your own records. The county clerk will deliver one copy to the friend of the court.

**3. Response from other party.**

If you receive a response to your motion from the other party, make sure you read it before you attend the hearing. Think about what you want to say on your behalf.

**4. Attend the hearing.**

You must attend the hearing on the motion.

**»» INFORMATION ABOUT ATTENDING THE HEARING**

**Bring the original and five copies of the Order Regarding Payment Plan/Discharge of Arrears (form FOC 110) with you to the hearing.** Also bring all supporting papers you have and any witnesses who are willing to testify.

1. Because you are representing yourself, you are expected to conduct yourself as an attorney would and to follow the same general rules an attorney would.
2. Make a list of information you think is important for the referee or judge to know. The information should relate to the reasons stated in your motion. You can use this list as a reminder to bring up the points you think are important.
3. If you think you need to order someone to attend this hearing, follow the procedure in Michigan Court Rule 2.506 or consult with an attorney.
4. Go to the judge's courtroom or referee's hearing room on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Be prepared to spend most of the morning or afternoon in court. Bring any witnesses with you.
5. If you are responsible for preparing the order, bring all copies of your order form.
6. Go into the courtroom or referee hearing room and tell the referee or clerk (sitting near the judge's bench) your name, that you are there for a hearing, and you are representing yourself. Do not interrupt any hearing in progress. Then take a seat in the back of the courtroom and wait for your case to be called.
7. When your case is called, be prepared to state:
  - 1) your name.
  - 2) that you are representing yourself.
  - 3) that you need an order for a payment plan or for discharging arrears.
  - 4) the facts or reasons for your request (**bring papers that support your facts or reasons**).
  - 5) why you believe this order would not be contrary to the best interests of the child(ren).

Answer the judge's or referee's questions clearly and directly. If the judge or referee wants to hear from the other witnesses, ask them to tell the court what they saw or know regarding your situation.

8. If the other party is in court, he or she will have a chance to speak also. When the other party talks, take notes. Do not interrupt the other party. After the other party speaks, you will have another chance to talk. Taking notes will help you with this.
9. After the judge or referee makes a decision, follow the instructions on the packet for FOC 110, "Order Regarding Payment Plan/Discharge of Arrears." You are responsible for preparing the order even if you do not get what you are asking for.

**NOTE:** If your hearing is held before a referee and you do not agree with the referee's decision, you have 21 days from the date of mailing of the referee's recommendation to file an objection and request a de novo hearing before the judge. Use the packet for FOC 68, "Objection to Referee's Recommended Order."

## INSTRUCTIONS FOR COMPLETING "MOTION REGARDING PAYMENT PLAN/DISCHARGE OF ARREARS"

**Please print neatly. After filling in the form, you will need to make at least five copies.**

Items A through J must be completed before your motion can be filed with the court. Please read the instructions for each item. Then fill in the correct information for that item on the form.

- A** Before you fill in the Case No., get your court papers for divorce, separate maintenance, family support, or paternity and copy the Case No. from those court papers onto this form.
- B** Also use the court papers to fill in the "Plaintiff" and "Defendant" boxes and, if applicable, the "Third Party" box. Copy the names from these court papers onto this form. For example, if your name is in the box that says "plaintiff," then you should write your name in the "plaintiff" box on this motion form.

You are the "moving party." Once you have written both names where they belong, you must check the box "moving party" in the same box as your name.

- C** Use this section to specify the amount of arrears on the case. Support arrears may be owed to a payee, to the State of Michigan, or to another agency or person. You must attach written proof of these amounts, which can be obtained from the friend of the court office.
- D** If any of the arrearage is owed to an individual, check this box if the statement is accurate.
- E** If any of the arrearage is owed to the State of Michigan or a political subdivision, check this box if the statement is accurate.
- F** Write in the amount of your income and frequency (weekly, monthly, etc.) with which you receive this income.
- G** Use this section to specify your assets and the value of those assets.
- H** Write in the amount you want to pay toward your support arrears and the frequency (weekly, monthly, etc.) with which you want to make payments.
- I** Write in today's date and sign your name. Now contact the friend of the court office in your county to find out how to get a hearing date. See page 3 of this booklet for details.
- J** Once you get a hearing scheduled, fill in the full name of the judge or referee who will be hearing this 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.

Now go to the county clerk's office with the original and five copies of this form and the four copies of each separate sheet. The clerk will attach one copy of each separate sheet to four of the copies. The clerk will return four copies to you.

Read page 3 of this booklet for details on mailing this form to the other party.

- K** On the date you mail one copy (and the separate sheets) to the other party, write in the date and sign your name on the remaining three copies.

Return to the county clerk with two copies. Read page 4 of this booklet for details.

**You must read this booklet for directions on the legal process.**

<b>STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY</b>	<b>MOTION REGARDING PAYMENT PLAN/ DISCHARGE OF ARREARS</b>	<b>(A) CASE NO.</b>
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Court address

Court telephone no.

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

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

v

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

- (C)** 1. Friend of the court records show that, as of \_\_\_\_\_ :  
Date
- a. my current support is \$ \_\_\_\_\_ per month. My youngest child in the case will be or was 18 years of age on \_\_\_\_\_ .  
Date
- b. my total arrears are \$ \_\_\_\_\_. Attached is written proof from the friend of the court office.
- c. I owe \$ \_\_\_\_\_ support arrears to \_\_\_\_\_ , the individual payee.  
Name
- d. I owe \$ \_\_\_\_\_ support arrears to the State of Michigan.
- e. I owe \$ \_\_\_\_\_ for Medicaid/confinement reimbursement arrears.
- f. I owe \$ \_\_\_\_\_ in statutory fees.
- g. I owe \$ \_\_\_\_\_ to \_\_\_\_\_ .  
Specify agency/person
2. It is in the best interests of the parties and the child(ren) that a payment plan be ordered in this case.
- (D)**  3. I understand that the individual payee must consent to entry of an order for payment plan when the arrears are owed to that individual. The payee's consent was not given under fear, coercion, or duress.
- (E)**  4. I owe arrears to the State of Michigan or a political subdivision and, absent a payment plan, I do not have the present ability and will not have the ability in the foreseeable future to pay the arrears.
5. I did not engage in conduct exclusively for the purpose of avoiding my support obligation.
- (F)** 6. I have gross income in the amount of \$ \_\_\_\_\_ per \_\_\_\_\_. I understand that I must provide adequate records to show proof of my income.
- (G)** 7. I have assests, solely or jointly owned, as of this date, as follows: (assests include but are not limited to vehicles, real estate, bank accounts, retirement accounts, trust funds, etc.) Continue on page 2 and attach a separate sheet if more space is needed.

Description	Net Value
a. _____	\$ _____
b. _____	\$ _____
c. _____	\$ _____

(See page 2 for remainder of motion.)

7. (continued.) Attach a separate sheet if more space is needed.

Description	Net Value
d. _____	\$ _____
e. _____	\$ _____
f. _____	\$ _____
g. _____	\$ _____
h. _____	\$ _____
i. _____	\$ _____

8. If arrears are owed to the State of Michigan, I will provide notice to the Office of Child Support at least 56 days before the hearing on this matter.

- H** 9. I ask:
- a. that the court order a payment plan of \$ \_\_\_\_\_ per month for \_\_\_\_\_ months toward support arrears in this case.
  - b. that if the court declines to order the payment plan as requested above, the court order a payment plan of support arrears as found by the court to be a reasonable monthly payment over a reasonable time in accordance with my ability to pay.
  - c. that the court grant me such other and further relief as is just and appropriate.

**I** 10. I further ask that once I complete this payment plan, the court enter an order discharging any remaining arrears.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**NOTICE OF HEARING**

**J** A hearing will be held on this motion before \_\_\_\_\_ Judge/Referee Bar no. \_\_\_\_\_  
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 FOC 117.

**CERTIFICATE OF MAILING**

**K** I certify that on this date I served a copy of this motion on the parties or their attorneys and as appropriate to the Office of Child Support or political subdivision by first-class mail addressed to their last-known addresses as defined in MCR 3.203.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature