

# Cass County Friend of the Court

Law & Courts Building, 60296 M62 Suite 3

Cassopolis, Michigan 49031

Phone: (269) 445-4436

Fax: (269) 445-4435

## **INSTRUCTIONS FOR FILING A MOTION FOR ARREARAGE PAYMENT PLAN**

These forms are for a person who is or was ordered to pay child support and who wants the court to grant an arrearage payment plan to avoid enforcement action, *including possible felony prosecution*, and to seek possible forgiveness of part of the amount owed.

In using these forms you are petitioning the court on your own without an attorney. You may represent yourself at the hearing or have an attorney represent you. The other parent has the same rights. The Friend of the Court (FOC) does not represent either party at the hearing.

Carefully read and follow all of the instructions before filling out the forms. Complete the forms and follow the procedures listed below precisely. The FOC cannot give you legal advice on how to represent yourself in this matter. If you are not able to represent yourself adequately in this matter, you should hire an attorney to represent you.

## **ARREARAGE PAYMENT PLAN PROGRAM INFORMATION**

### *Granting an Arrearage Payment Plan:*

The payer of support may initiate an arrearage payment plan by filing a motion with the Circuit Court. After proper notice and hearing, the Court may approve the plan if it finds the plan is in the best interest of the parties and the children.

**If the arrearage is owed to an individual payee, the court must find both of the following:**

- The payee has consented to the payment plan under circumstances that satisfy the Court that the payee is acting without coercion or duress, and
- The arrearage did not arise from the conduct of payer exclusively for the purpose of avoiding the support obligation.

If the payer has state owed arrearage, the payer must send a notice of the motion to the Office of Child Support (OCS) at:

Office of Child Support Operations – Lansing  
c/o Arrears Payment Plan Review Unit  
P.O. Box 30744  
Lansing, MI 48909-8250

**If the payer has state owed arrearage, the Court may grant the motion if it finds:**

- The arrearage did not arise from conduct of the payer exclusively for the purpose of avoiding the child support obligation;
- The payer does not have and will not have the ability to pay the arrearage in the foreseeable future, absent a payment plan; and
- The payment plan will pay a reasonable part of the arrearage over a reasonable time period.

**A court may approve a plan that does not pay the entire arrearage, but the plan must require that:**

- A payer who is at or below the poverty level makes payments for at least 24 months;
- A payer with income above the poverty level makes payments for at least 24 months plus one additional month for every \$1,000 above the poverty line that the payer earns.

OCS or its designee will have 56 days to provide written comments to the court before the hearing. OCS staff will conduct a review of the arrearage payment plan requested by the payer.

**Note: A person who knowingly provides false information on a motion is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$1,000 or both. Also, any payer prosecuted under the Michigan penal code, 1931 PA 328, MCL 750.161, 750.165 and 750.167 is not eligible to participate in a payment plan under this section. This involves desertion, abandonment, or refusal or neglect to provide for family as required by court order.**

## **CONSIDERATIONS DURING PLAN**

During the term of this payment plan, the law allows the Court to reinstate arrearage upon a motion by an interested party showing good cause. Good cause includes, but is not limited to:

- The payee becoming a recipient of public assistance; or
- The payer receiving property sufficient to pay a substantial portion of the amount discharged. Such circumstances may include:
  - Lottery proceeds;
  - Other winnings;
  - A settlement under an insurance policy; or
  - A judgment in a civil action or an inheritance.
- The law allows the Court to order non-monetary conditions such as the payer participating in:
  - A parenting program;
  - A drug and alcohol counseling program;
  - A work program;
  - Counseling, anger management classes, intervention programs, etc.; and/or
  - Continued compliance with a current court order.

## **FULFILLING PAYMENT PLAN REQUIREMENTS**

The payer **must** request a hearing before the Court upon completion of the plan. The payer **must** provide notice to all interested parties such as the custodial party (CP) and/or OCS, with a copy to the FOC. The law allows the Court to enter an order discharging any remaining arrearage if, upon completion of the plan, the Court finds the payer in full compliance with the plan. If the payer substantially completes the plan, the Court may enter an order granting relief appropriate to the circumstances of the case.

## **COMPLETING THE MOTION FOR ARREARAGE PAYMENT PLAN**

- (A) Print or type your case number in the upper right hand corner.
- (B) Using your other court papers, identify which parent is the Plaintiff and which is the Defendant. Fill in the names, current address and telephone numbers for yourself and the other parent in the appropriate boxes. If you are not aware of the other parent's address, contact the FOC for assistance.
- (C) On line 1, insert the date of the most recent support order or judgment in this matter.

- (D)** On line 2, mark the box showing which party is requesting the plan. For example, if you are requesting it and your court papers show that you are the Defendant, mark the box by Defendant.
- (E)** On line 3, enter the amounts owed to the State and to the other party, and any fees and costs owed. *You can obtain the exact numbers from the Friend of the Court.*
- (F)** On line 4, in the space provided, explain why this arrearage plan is necessary and appropriate. Be specific. Use additional sheets if needed.
- (G)** On line 5 and following where indicated, enter your employer's name and address, how long you have worked there, your average gross (before tax) income, your average net (after tax) income, and how often you receive this amount (how often you get paid). If you are not employed, enter "None".
- (H)** In the space after line 6, list any assets you own and their value. Use more sheets if necessary.
- (I)** On this line, put in the date and sign the motion where indicated.
- (J)** Fill in the date on which you mail the forms and sign the form where indicated. Court rules require the other party (parent) must be given proper legal notice of the scheduled hearing. If he or she is not, the Court may dismiss your petition. The Motion For Arrearage Payment Plan **MUST** be mailed on the same day listed on the Certificate of Mailing. The other parent should receive the Motion at least fourteen (14) days in advance of the hearing. Mail one copy of the file-stamped Motion and any attachments, etc, to the other party on the date listed on the Certificate of Mailing.

## FILING AND MAILING THE MOTION

- Make three (3) copies of the Motion and any attachments before taking your Motion to the Circuit Court File Room at the Law and Court's Building. If you have the Clerk make copies for you, there will be a charge of \$1.00 per page.
- The original of the Motion and the three (3) copies must be filed with the Circuit Court File Room, and stamped by the Clerk with a date it was filed. You may do this in person, or by mail (Cass County Clerk, Law and Courts Building 60296 M-62 Suite 10, Cassopolis Michigan 49031). There is a \$60.00 filing fee for these petitions. **THIS MUST BE PAID TO THE CLERK'S OFFICE AT THE TIME OF THE FILING**, before the clerk will file and stamp your petition. Your payment may be by CASH, CHECK or MONEY ORDER made payable to Cass County Clerk's Office.

In exceptional circumstances, if you can convince the Court that you are financially unable to pay the required fee, the Court has the authority to waive the fee. If you wish to apply for a fee waiver, a form called "AFFIDAVIT AND ORDER - SUSPENSION OF FEES/COSTS" can be requested from the FOC. If you fill out this form and return it to the Circuit Court File Room, the Judge will consider whether to approve or deny your request. If it is approved, you will not have to pay the fee. If it is denied, you will not be able to file your motion unless you pay the fee. The AFFIDAVIT AND ORDER should only be filed if you truly cannot afford to pay the \$60 fee.

- If you are mailing the copy of the motion on the same day it is filed, you may complete the Certificate of Mailing as indicated in (J), above. If for some reason you are not mailing it that day, you will need to make an extra copy so that you can file it with the Clerk after you have completed the Certificate of Mailing.
- The Circuit Court File Room staff will take the original Motion form for filing in the court file. The Clerk will forward one copy to the FOC. The two (2) remaining copies will be returned to you.
- Mail one copy of the motion, etc. to the other party.
- Keep the remaining copy of your Motion, etc., and bring it with you to your hearing, along with a copy of your custody order.
- The FOC will review your Motion and determine if it is to be set for hearing or if it is appropriate for mediation. You will be sent a notice advising you of the date of hearing or mediation.

State of Michigan  
43<sup>rd</sup> Judicial Circuit  
Cass County

**MOTION FOR ARREARAGE  
PAYMENT PLAN**

Case No. \_\_\_\_\_  
(A)

Law & Courts Building, Room 3, 60296 M 62, Cassopolis, MI 49031

(269) 445-4436

(B) Plaintiff's name, address and phone:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant's name, address and phone:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. On (C) \_\_\_\_\_ a judgment or order was entered regarding support.

2. (D) The  Plaintiff  Defendant requests that the Court order an arrearage payment plan.

3. (E) The total arrearage owed to the State is: \$ \_\_\_\_\_.

The total arrearage owed to the  Plaintiff  Defendant is: \$ \_\_\_\_\_.

The total fees and costs owed are: \$ \_\_\_\_\_

4. (F) The reason for this motion is: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The following information is provided:

(G) Employer's Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Length of Employment: \_\_\_\_\_

Average Gross Pay: \_\_\_\_\_

Average Net Pay: \$ \_\_\_\_\_  per week  per month

other \_\_\_\_\_

6. (H) Assets: state the value of your car, home, bank deposits, bonds, stocks, etc.

ASSET	VALUE
A. _____	\$ _____
B. _____	\$ _____
C. _____	\$ _____
D. _____	\$ _____
E. _____	\$ _____
F. _____	\$ _____

7. I hereby request that an arrearage payment plan be established.

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

(I) \_\_\_\_\_  
Date

\_\_\_\_\_  
Requesting Parent's Signature

**Hearings must be scheduled at least 56 days after the date of mailing due to OCS notice requirements.**

**CERTIFICATE OF MAILING**

I certify that on this date, I mailed a copy of this Motion for Arrearage Payment Plan to the other parent/party by ordinary mail at the address listed above.

(J) \_\_\_\_\_  
Date

\_\_\_\_\_  
Requesting Parent's Signature

**CHECKLIST TO MAKE SURE  
YOU HAVE DONE WHAT IS NEEDED**

Did you:

- Fill out all requested information on the form?
- File the Motion and fee with the Cass County Clerk's File Room at the Law and Courts Building?
- Mail a copy of the motion and any attachments
- File a copy of the Motion and completed Certificate of Mailing with the Clerk after you mailed the motion and notice of hearing to the other party and completed the Certificate of Mailing?
- Keep one copy of the motion and attachments for yourself?

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