

COURT COMPLIANCE OFFICE HANDBOOK

Introduction

This handbook summarizes the Court Compliance Office duties and procedures in domestic relations cases, the parties, rights and responsibility and some basic court procedures.

Tribal Court hears and decides domestic relations cases and other family law cases. Those cases include divorce, paternity, custody, and support matters, plus other family-centered disputes. The Court Compliance Office (CCO) is supervised by the Chief Judge. The CCO assists the court in domestic relations cases that involve minor children.

Parents can make family disputes less stressful for their children by maintaining their children's regular routines, encouraging frequent contact between the children and both parents, supporting the other parent's involvement in the children's schooling and other activities and exchanging information about the children. When parents cooperate, they lay a solid foundation for their new parental responsibilities and relationships. Children want both parents to be part of their lives, to attend their graduations and weddings, to celebrate the births of their children, and to be part of other major life events. They want to be able to say that, despite how Mom and Dad may have felt about one another, they always treated each other with courtesy and respect and they never put their children in the middle of their dispute.

Parties' Rights and Responsibilities

Each party has the right to:

- Request a meeting with the CCO employee who is responsible to investigate custody, parenting time, or support.
- Ask the Compliance Officer to recommend that an order for support or health insurance be modified.
- Expect the CCO to perform its duties under Tribal laws, Michigan laws and their respective court rules.
- Be treated fairly and courteously by CCO employees.
- File a grievance with the Chief Judge concerning a CCO employee or a court procedure.
- Hire and consult an attorney.
- Decline all CCO assistance ("opt out") ---if both parties agree and the court approves.

Each party has the responsibility to:

Provide the following information *in writing* to every CC Officer that is administering a case involving that party:

- Current residential and mailing addresses.
- Current employer's (or other source of income) name, address, and telephone number.
- Current residential telephone number.
- Occupational or drivers licenses held and the drivers license number.
- Social security number, unless exempt by law from disclosing that number.
- Current residence of children.
- Current information regarding health care coverage that is available to either party as a benefit of employment, or that either party purchases directly from an insurer.
- Obey all court orders.
- Treat the CCO employees courteously.

Court Compliance Office Duties

- When a child's parents cannot agree, or when directed by the judge, to conduct an investigation and to make recommendations to the court regarding:
 1. Custody.
 2. Parenting Time
 3. Child support, medical support, and sometimes spousal support.
- To offer voluntary mediation services (or Peacemaking) to help settle disagreements about custody or parenting time.
- To collect, record, and monitor distribution of support payments.
- To help the court enforce orders for custody, parenting time, and support.
- To inform the parties they may decline CCO services.
- To make available standardized court forms that parties may use to file motions and responses regarding custody, parenting time, and support.
- To inform the parties of the availability of joint custody.

The Court Compliance Office has no authority to do the following:

- Investigate abuse and neglect.
- Change an Order.
- Investigate criminal activity.
- Give legal advice to either party.

Opting Out of All Services Offered by the CCO

Parties who agree that they do not need the CCO's Services do not have to use them. They may file a joint motion to opt out and if the court approves it, the parties then must

deal with each other directly. Before the court may approve a motion to opt-out, the parties must sign and file a document that summarizes the available CCO services and acknowledges that the parties have chosen not to use those services.

The opt-out motion should be filed at the same time as the complaint that starts the case. If an opt-out motion is filed, the court must order the CCO not to open a case file unless one or more of the following are true:

- A party has asked the Court Compliance Office to open a case file.
- There is evidence of domestic violence or bargaining inequality, coupled with evidence that the opt-out request is against the best interest of a party or the parties' child.

Parties who opt-out must assume full responsibility for administering and enforcing the court's orders. To assure a proper accounting of support payments and their consideration in future proceedings, the parties may make support payments through the Tribal Court. At any time, a party can cause the CCO office to reopen its case file by requesting any service (in writing) from the CCO.

Court Procedures

Starting a Case

No court can require a party to use an attorney. However, anyone who wants to start a court case must follow the Tribal Court Rules (and in the absence of those, the Michigan Court Rules.) Because most cases involve difficult legal and factual questions, most people want to be represented by an attorney.

Plaintiff's Complaint

A case begins when the person requesting the courts assistance (the plaintiff) files a "complaint" that asks the court to decide a dispute between the plaintiff and the other party (the defendant.) In a domestic relations case, the plaintiff may ask the court to do any of the following:

- Grant a divorce
- Order a person to pay child support (including medical support) or spousal support.
- Establish paternity.
- Establish custody of a child with one (or both) parties.

Service

The plaintiff must arrange for the defendant to be served with a summons and a copy of the complaint. (The Court will send a copy by certified/restricted mail. If it is not signed for, then the plaintiff will be responsible to get a process server to have the defendant

personally served.) The summons tells the defendant to answer the complaint. Whenever minor children are involved or spousal support is being requested, a handbook like this must be given to the defendant, along with the summons and complaint.

Defendant's Answer to the Complaint

The defendant usually is allowed 28 days to answer the complaint. If the defendant does not answer within 28 days, the judge may enter an order granting the plaintiff's requests.

Hearings

After a complaint and an answer have been filed, either party may file a motion asking the court to decide the custody, parenting time, and child support issues. Often the Court Compliance Office will provide a type of alternative dispute resolution (Peacemaking) or conduct an evaluation before the court makes a decision regarding custody, parenting time, or child support. The court usually holds a hearing to get the information it needs to decide those issues.

Both parties must be notified of the time and place of a hearing. This advance notice gives the parties an opportunity to appear at the hearing and tell the judge what they think the court should do.

Court Orders

When a court makes a decision, it must sign a written order summarizing the decision. Someone must prepare the order. Usually one of the attorneys prepares the order, but sometimes the judge prepares it. Either way, an order is not enforceable until a judge signs it. A party, attorney, or CCO employee can only recommend an order and prepare it; the recommended order does not become enforceable until a judge signs it or until it enters because neither party objected within a certain amount of time. If you disagree with an order and want to challenge it, your options include filing a motion for a rehearing (by the judge who issued the order) or filing an appeal to a higher court. You cannot change an order by filing a grievance or by complaining to another government agency.

Preliminary Orders

Courts sometimes enter temporary orders that remain in effect only until the parties have an opportunity to present more detailed evidence and arguments at a later hearing. This often happens in divorce cases.

ExParte Order (temporary orders entered at the request of one party before any formal hearing)

A judge will enter an ex parte order without the other party present when the judge believes that serious harm will occur if the judge defers issuing any orders until the

opposing party has the opportunity to speak with the judge. Ex parte orders usually are intended to keep the situation stable until the judge can hear from both parties. A party who disagrees with an ex parte order may file a written objection to the order or file a motion asking the court to change or cancel the order. Even if an objection or motion is filed, the ex parte order will remain in effect until it is changed by the court.

When an ex parte order deals with custody, parenting time, or child support, the order will include a notice that a written objection or a motion to change the order may be filed within 14 days. If a party files an objection, the CCO will try to help the parties settle the dispute without going to court. If the parties cannot agree, the CCO will provide the forms and the instructions that a party who is not represented by an attorney will need to schedule a court hearing.

Temporary and Final Orders

After the court decides a motion challenging an ex parte order, it will enter a temporary order with the instructions that the parties must follow until a final judgment order is entered.

Order (including judgment orders that deal with custody, parenting time, and child support) can be changed, but only the court can modify an order; the CCO cannot. Normally, a court will change an order if both parties have agreed to the change. Otherwise, the court will modify an order only after one party files a motion and the court holds a hearing on the motion.

The party's agreement to change a previous court order will be recognized by the court and the CCO only after the judge signs and enters new order that approves the agreement. Merely telling or writing to tell a court employee that the parties have agreed to something cannot change the court's previous order.

Reconciliations and Dismissals

Not every domestic relations case ends with the parents divorced or separated. If the parents are trying to work out their differences and no longer wish to have an order in their case enforced, they may file a motion asking the court not to enforce the order.

If the parties wish to stop all further action on a case, they must file a proposed order of dismissal with the court.

Enforcing Orders When One Parent Leaves Michigan

The obligation to pay child support does not end when a parent leaves Michigan, even if it is the custodial parent and the parties' children who move. Both parents must tell the CCO whenever they move. The support payer must continue to pay support and the CCO must continue to enforce the order.

If a support payer leaves Michigan and stops paying as ordered, there are laws that allow Michigan courts to have their support orders enforced in other states. Every state

has passed the Uniform Interstate Family Support Act (UIFSA,) a law that allows one state's court to set and enforce support obligations when the parents live in or earn an income in different states.

Alternative Dispute Resolution

When parties go to court, the judge makes decisions affecting the family. If you are a party to a domestic relations case, you are encouraged to participate in alternative dispute resolution (ADR or Peacemaking), which may allow you to settle your case without further court proceedings. In addition to the parents, ADR may involve grandparents and other third parties.

Information about Custody, Parenting Time, and Support Payments

There are many different kinds of custody arrangements. For any arrangement, the court must decide who will make the major decisions about each child. The court also must decide how much time the child will spend with each parent.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge will decide by analyzing the "best interests of the child" factors listed in the Michigan Child Custody Act. Those factors will be analyzed at a hearing during which the parents may present evidence and arguments about each factor.

At either parent's request, the court must consider ordering "joint custody," an arrangement in which both parents participate in making the major decisions that affect their child. If both parents agree to a joint custody arrangement, then the court must order it unless the court determines that joint custody is not in the best interests of the child. The court must state on record its reasons for granting or denying the request for joint custody. The court also may consider ordering joint custody even if neither parent has requested it. A judge who is considering ordering joint custody must consider the factors that are in the best interest of the child and also whether the parents will be able to cooperate and usually agree on important decisions affecting their child's welfare.

If the court determines that a child's best interests are not adequately represented in the custody proceedings, the court may appoint a lawyer-guardian ad litem to represent the child in the court proceedings. If the parties have the ability to pay, the court may require them to pay the lawyer-guardian ad litem fees.

Custody Questions and Answers

Can a custody order be changed if both parents agree?

Both parents may sign an agreement and present an order to the court. If the judge approves and signs the consent order, it will then become the new custody order.

Do I need an attorney to file a motion to change custody?

You may file the motion on your own, the CCO will provide the forms and instructions that you will need. However, the court will expect you to follow the same rules that an attorney must follow. There are many complex issues in a custody case and most people prefer to have an attorney represent them. The CCO cannot file a motion for you, nor can that office provide you with an attorney or tell you what to say in the motion.

Can the CCO assist parties in reaching an agreement regarding custody?

Yes. The CCO provides domestic relations mediation when there is a custody dispute and both parties agree to participate in mediation or peacemaking.

If a motion for custody has been filed, and the parents cannot reach an agreement on their own, what will the CCO do?

- Tribal Court will offer peacemaking services or alternative dispute resolution from a community provider. (Paid for by the parties all or in part.)
- If the judge directs, investigate the custody issue and file a written report and recommendation based upon the "best interests of the child" factors listed in the Michigan Child Custody Act.

May I receive a copy of the CCO's custody report and recommendation?

Upon request, and before the court acts on the recommendation, the CCO must give each party or that party's attorney a copy of the report, including the custody recommendations and a summary of the information used in making the recommendation.

What happens if I have custody according to the court's order, but the other parent does not return the child to me as required by the order?

- You may contact the court office and request that the order be enforced.
- You may contact your attorney.
- If you believe the other parent will refuse to return the child, you may contact the police of the prosecuting attorney and ask either to file a parental kidnapping charge.

Is the CCO allowed to investigate child abuse or neglect?

No, the court does not have the authority. Abuse or neglect should be reported to the Department of Human Services in the county where the custodial parent and children live.

A judge will consider allegations of abuse or neglect when making a decision on custody or parenting time. The Court Compliance Office has a duty, when ordered by the court, to conduct custody or parenting time investigation. However, both the judge

and the CCO will rely on Child Protective Services to investigate and evaluate the abuse or neglect allegations.

Parenting Time

A parenting time order specifies when a child will spend time with each parent. During parenting time that parent is responsible for all routine decisions affecting the child.

Parenting Time Enforcement by the Court Compliance Office

The CCO is required to enforce parenting time orders. The CCO usually will initiate enforcement action when it receives a written complaint stating specific facts that show a violation of an order governing custody or parenting time. However, the CCO may decline to respond if (1) the alleged violation occurred more than 56 days before the complaint is made, (2) the complaining party has previously made two or more similar complaints that were found by the court to be unwarranted and the complaining party has failed to pay the costs assessed in those prior proceedings, or (3) the court order does not include an enforceable parenting time provision.

The CCO starts endorsement proceedings by sending a copy of the written complaint to the accused party within 14 days after the CCO receives the complaint. If it finds that the court's order has been violated, the CCO may suggest "makeup" parenting time, start an action requiring the party to show cause why the court should not find the party in contempt, file a motion to modify existing parenting time provisions, schedule mediation or schedule a joint meeting with the parties.

Parenting Time Modification Motions

A party may file a motion to change the parenting time order. The CCO has printed forms and instructions for filing this type of motion. You may want to hire an attorney to assist you with the motion.

If both parents agree to change parenting time arrangement, they may sign an agreement to that effect and ask the judge to modify the current order. It is important to remember that, even though the parties have agreed to the change, the current order remains in effect until the judge signs a new order.

Parenting Time Questions and Answers

My order for parenting time states that I will have "reasonable parenting time" What does that mean?

An order that grants "reasonable" parenting time assumes that you and the other parent will agree to a parenting time schedule that is convenient for both of you and the child. If you and the other parent cannot agree on a "reasonable parenting time" schedule you may:

- Ask the other parent to agree to attend peacemaking or alternative dispute resolution, either with you or separately.
- Ask the CCO to determine whether the order is specific enough to allow the office to offer assistance.
- File a motion or contact your attorney to do so.

My order lays out a specific parenting time schedule. I would like to change that schedule. What can I do?

First, ask the other parent to agree to a change. If you agree, then both of you should sign the agreement, or otherwise prove to the court that you agree. The judge usually will sign an order that is based on the parents' agreement. Remember that the agreement by itself is not enforceable; it must first be converted into a new court order.

If you cannot agree on the changes, either parent may ask the court to initiate peacemaking or mediation. If no agreement is possible, you may file a motion asking the court to order a new parenting time schedule. You may file the motion on your own, or have an attorney file it for you.

The other parent is not making the child support payments required by our court order. Do I have to allow parenting time?

Yes. You must continue to obey the order's parenting time provisions. Ask the CCO to enforce the child support provisions.

The other parent is not sending or returning clothing or other personal items that our child uses during parenting time. Can the Court Compliance Office do something about that?

The CCO can only enforce the court's written orders. If your court order does not say anything specific about transferring clothing or other personal items, try to work it out with the other parent directly or with help, such as peacemaking or mediation services. If that is unsuccessful, you may file a motion requesting a new court order that will require that clothing or other personal items be transferred along with your child before and after parenting time.

I think that my child is being abused during parenting time spent with the other parent. What should I do?

Report your concerns to the Department of Human Services Child Protective Services Division in the county where the custodial parent and children live. The CCO does not have the authority to investigate abuse or neglect allegations, nor can it remove children from the home of a person who commits or allows mistreatment. Only Child Protective Services can do that.

My child does not want to spend time with the other parent. What can I do?

Parents must obey court orders regardless of the child's age and preferences. Each parent must try to promote a positive relationship between the child and the other parent. You may want to try the following:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, or the other parent.
- Contact the CCO and request mediation.
- File a motion asking the court to change your parenting time order.

The other parent refuses to see our children. What can CCO do?

The CCO cannot force a parent to see his or her children. To promote a positive relationship with the children and the other parent, you may wish to consider counseling, mediation, or filing a motion to change the parenting time order.

Support

A "support order" is any court order that requires a parent or ex-spouse to pay:

- Child support
- Spousal support
- Medical, dental, and other health care expenses.
- Confinement expenses (the mother's childbirth costs and other medical bills)
- Child care expenses
- Educational expenses

All support orders state an amount that is due on the first day of each month. Support is past due if not paid by the last day of the month. When an order takes effect on a day other than the first day of the month (or ends on a day other than the last day of the month,) the support amount must be prorated for the partial month.

Support Investigations and Reports

The CCO is required to periodically review an order's child support provisions, including health care. The Court Compliance Office will ask the court to modify the order if a changed in warranted.

Child Support Formula

Michigan law (which we abide by absent an ordinance and law of the Tribe) requires a standard child support formula to be used to determine how much child support a parent must pay. That standard formula considers the parents incomes, how many children

they have, and other factors. The court may set a support amount that differs from the formula number, but only if the judge explains in writing or during a court hearing why the formula number is unjust or inappropriate.

Support Payment Procedure

Unless otherwise ordered, support payers must make their payments to: Little River Band Tribal Court, 3031 Domres Road, Manistee, MI 49660.

When a payment is received which sufficiently identifies the person to whom the support should be paid, the Tribe's accounting department shall issue the check the following week on Tuesday.

There is a \$42.00 per year service fee. Broken into a weekly amount, it adds \$.80 per week to support payments for administrative purposes.

Automatic Support Enforcement

The CCO has several methods of collecting past due support. They include:

- Immediate Income Withholding from the support payer's employer or other income source to withhold some of the support payer's income and send the money to Tribal Court.
- Contempt of Court (Show Cause Hearing) if support is not paid on time, the CCO or a party may begin contempt actions against the payer. The court will order the payer to appear in court and "show cause" why the court should not find the payer "in contempt of court."
- Income Tax Intercept. If child support is overdue and the case otherwise satisfies certain statutory requirements, the CCO must request an income tax "intercept." In such cases, any tax refund to which the support payer is entitled will be paid to the Tribal Court for past due support.
- The Court can order arrearages or support to come out of a Tribal Members per capita payment to be sent to the custodial parent.

Modification of Child Support Order

The CCO will review child support orders on the written request by a party, but not more than once every 36 months. If you need an immediate change in the support amount because of a change in your income or the other parent's income, you should file a court motion requesting the change.

Threshold for a Motion to Modify the Support Order

The Court Compliance Office will ask the court to change the required monthly support payment if the difference between the current support amount and the amount determined by the standard child support formula is at least 10 percent or \$25.00 per month. If the difference between the current support amount and the current formula amount is less than that minimum threshold, the CCO is not required to request a change.

Agreement to Modify the Support Order

If the parties agree to change the support amount to a different amount determined by the child support formula, they may sign an agreement. That agreement, once put in the form of an order, signed by the judge, and filed, becomes the new support order.

Child Support Questions and Answers

How do I get an order for child support?

If no one has yet commenced a civil lawsuit that raises the child support issue, you first must file a complaint that includes a request that the court enter a child support order. If you and the other parent agree to establish support at the amount determined by the standard child support formula, you may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed in the court, it becomes the court's support order. If you cannot agree to follow the formula, the judge will determine the appropriate support amount.

Do I need an attorney to get a support order?

You are not required to have an attorney. However, you may find that you need an attorney's help to file the correct papers and otherwise follow the court rules.

May I received child support after my child reaches age 18?

Child support can continue up to age 19 ½ if the child attends high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate and the child continues to reside on a full-time basis with the person who receives the support payments.

If I have been paying child support as required by the court's order but the custodial parent will not allow me the parenting time required by that order, do I have to keep paying support?

Yes. An Order's parenting time and child support provisions are enforced separately. (See *Parenting Time Enforcement*.)

The other parent is not paying child support as ordered. What can I do?

Contact the CCO for enforcement help if the other parent is more than one month behind on the support payments. You may also hire an attorney to start the enforcement proceedings.

My court order says to pay support through the Tribal Court Compliance Office, May I pay the other parent directly?

No, and you might not receive credit for payments made directly to the other parent.

Will the CCO make sure that child support money is spent on the children?

No. The law does not authorize the CCO to investigate how the custodial parent spends child support payments. However, the court may change the custody or support arrangements if you can show that the custodial parent has neglected the children's needs.

Will the court modify the support if the payer is in jail or prison?

The support amount is determined by the standard child support formula, which considers the parties incomes. The CCO is required to initiate a review within 14 days of receiving notice that a parent has been incarcerated or released from incarceration.

Miscellaneous Issues

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the children's residence to a place not allowed by my current order?

Parties may agree to a change of residence (domicile) by signing an agreement (stipulation.) This stipulation must be put in the form of an order and signed by the judge. It then becomes an order of the court. If you and the other parent cannot agree on the proposed change of domicile, you may:

- Try peacemaking or mediation; or
- File a motion that asks the court to enter an order approving the change.

You must obtain a court order approving the move.

Complaints about Attorneys, Judges or the Court Compliance Office

How do I file a complaint about the CCO?

You may file a grievance. A grievance may not be used to change the recommendation in your case, or to challenge a judge's decision.

The judiciary will investigate your grievance and respond in writing within 30 days or explain why a response cannot be provided within that timeframe.

Glossary of Frequently Used Terms

Adjournment – Postponing a hearing until a later time or date.

Alimony – See spousal support

Arrearage – The total of support payments that are overdue.

Bench Warrant – A court order to arrest a person and bring that person before the court that issued the warrant.

Chief Judge – In courts with two or more judges, one judge is selected as chief judge. The chief judge administers the court.

Domicile – the permanent home to which a person, even when temporarily living elsewhere, always intends to return.

Evidence – The testimony of a witness, documents, or other items presented to a court to prove a fact.

Court Compliance Office (CCO) – In this handbook, it means an office that assists the court in all family matters. The office can investigate, make recommendations, and help enforce the court orders that affect minor children.

Joint Custody – There are two types of joint custody which may exist together or be combined with another custody arrangement:

Joint legal custody: The children live primarily with one parent,, although both parents participate in major decisions affecting the children.

Joint physical custody: The children live with each parent for extended periods.

Jurisdiction – The court's power to decide cases that come before it. Whether a court has jurisdiction over a case depends on the type of case and on the parties' connections to the county/state/reservation where the court is located.

Motion – A formal written request that a court take a specified action. A motion is sometimes called a petition.

Order – The written and signed decision of the court.

Party – A lawsuit's plaintiff or defendant.

Payee – The person entitled to received support payments. Payee is also known as support recipient.

Payer – The person who must pay support. Also known as the payer or obligor.

Petition – See motion

Pleadings – Papers filed with a court by a party to a lawsuit. Pleadings state claims against the other party or state that other party's defenses to claims.

Reconciliation – When parties to a domestic relations action work out their differences and decide to remain together as a family unit.

Show Cause Hearing – The court hearing at which a person must respond to a charge that he or she violated a court order. Also known as a "Contempt of Court " hearing.

Spousal Support – The money paid to support a spouse or former spouse. Formerly known as "alimony."

Waive – To give up a right, claim, or privilege.