

## Obtain Temporary Orders and Agreements

- I. Overview §6.1
- II. Prepare and File Ex Parte Orders and Motions for Temporary Orders
  - A. Ex Parte Orders §6.2
  - B. Temporary Orders Requiring a Hearing
    - 1. In General §6.3
    - 2. Restraining Orders §6.4
    - 3. Personal Protection Orders (PPOs) §6.5
- III. Obtain Temporary Relief Without Going to Court
  - A. By Consent Order §6.6
  - B. By Private Agreement §6.7
  - C. Temporary or Permanent Resolution §6.8
  - D. When You Should Recommend Settlement to Your Client §6.9
- IV. Go to Court
  - A. In General §6.10
  - B. Motion Day §6.11
  - C. Who Should Appear §6.12
  - D. Address the Court §6.13
  - E. Prepare and File the Order §6.14
  - F. Seven-Day Notice of the Entry of an Order §6.15
  - G. Follow-up §6.16
- V. Use the Friend of the Court/Domestic Relations Referee
  - A. In General §6.17
  - B. Alternative Dispute Resolution §6.18
  - C. Investigation and Recommendation §6.19
  - D. Domestic Relations Referee Hearings §6.20
  - E. Enforcement §6.21
- VI. Child Custody and Support Orders
  - A. If Parties Reside Together §6.22
  - B. Child Custody §6.23
  - C. Agreeing on Custody §6.24
  - D. Removing Children from the Jurisdiction §6.25
  - E. Child Support
    - 1. Computing the Amount of Support §6.26
    - 2. Child Care Expenses §6.27
    - 3. Health Care Expenses §6.28
    - 4. The Income Withholding Order §6.29
    - 5. Who Receives Payment §6.30
    - 6. Support Beyond Age 18 or Graduation from High School §6.31
    - 7. Income Tax Dependency Exemption and Related Child Tax Credit §6.32
    - 8. Life Insurance as Security §6.33
  - F. Prepare the Motion and Order §6.34

## *Divorce Cases in Michigan*

- G. Orders Referring Issues to the Friend of the Court §6.35
  - VII. Parenting Time
    - A. In General §6.36
    - B. Compelling, Restricting, or Terminating Parenting Time §6.37
    - C. Grandparenting Time §6.38
  - VIII. Spousal Support
    - A. In General §6.39
    - B. COBRA Coverage §6.40
    - C. Preparing the Order §6.41
  - IX. Property
    - A. Preventing the Dissipation of Assets §6.42
    - B. Setting Aside a Mutual Restraining Order §6.43
    - C. Removal of Personal Property §6.44
  - X. Removing One Party from the Marital Home §6.45
  - XI. Order for Attorney Fees §6.46
  - XII. Orders to Show Cause §6.47
- Forms
- 6.1 Ex Parte Order for Custody, Support, Parenting Time, and Attorney Fees
  - 6.2 Certificate on Behalf of Plaintiff Regarding Ex Parte Interim Support Order (Wayne County)
  - 6.3 Certificate of Conformity for Domestic Relations Order or Judgment (Wayne County)
  - 6.4 Release of Claim to Exemption for Child of Divorced or Separated Parents
  - 6.5 Order to Show Cause (Divorce)
  - 6.6 Request for Hearing on a Motion (Praecipe)
  - 6.7 Notice of Hearing
  - 6.8 Praecipe for Motion/Notice of Hearing/Certificate of Service
  - 6.9 Ex Parte Mutual Restraining Order Regarding Property (Divorce)
  - 6.10 Seven-Day Notice of the Entry of an Order (Divorce)
  - 6.11 Objection to Friend of the Court Recommendations (Divorce)
  - 6.12 Order Referring to Referee and Implementing Friend of the Court Recommendations (Divorce)
  - 6.13 Motion for Referral to a Domestic Relations Referee (Divorce)
  - 6.14 Order Referring to Domestic Relations Referee
  - 6.15 Motion to Prevent the Removal of Minor Children from the Court's Jurisdiction
  - 6.16 Order to Prevent the Removal of Minor Children from the Court's Jurisdiction
  - 6.17 Motion for Temporary Child Support and Custody
  - 6.18 Temporary Order for Child Custody, Parenting Time, and Child Support
  - 6.19 Consent Order for Child Custody, Parenting Time, and Child Support
  - 6.20 Agreed Order for Support, Possession, Parenting Time, and Referral to Referee
  - 6.21 Motion to Compel Parenting Time
  - 6.22 Order to Compel Parenting Time
  - 6.23 Motion for Order to Show Cause (Divorce)
  - 6.24 Plaintiff's Motion for Temporary Spousal Support
  - 6.25 Stipulated Mutual Restraining Order Regarding Property (Divorce)
  - 6.26 Order Setting Aside a Mutual Restraining Order Regarding Health Insurance Coverage
  - 6.27 Motion to Remove Personal Property (Divorce)
  - 6.28 Order Allowing the Removal of Personal Property (Divorce)

- 6.29 Motion for Removal of the Defendant from the Marital Home
- 6.30 Order for Removal from the Marital Home (Divorce)
- 6.31 Plaintiff's Verified Motion for Attorney Fees (Divorce)
- 6.32 Order for Attorney Fees (Divorce)

## I. Overview

**§6.1** If the clients have agreed to early stage mediation or collaborative practice, they will also agree to (1) maintain the status quo that existed before one of them decided to move forward with the divorce or (2) negotiate an interim agreement, which may include separation, to cover the new situation. These agreements are recorded by the mediator or by the attorneys in the collaborative practice case (if a mediator is not part of the team) and are circulated between the parties and their attorneys after each session. They are not entered as orders. Part of the basis for mediation and collaborative practice is that everyone must be able to make and keep promises. You can still use the issues identified in this chapter as a checklist of issues that must be negotiated or resolved in mediation or collaborative practice.

Research has shown that the stress on the couple and particularly on the children can be reduced when the parties separate. Therefore, working toward the separation in a humane and reasoned fashion will help the family. It can reduce the acrimony between the parents. Reduced conflict usually results in reduced cost to the parties. While attorneys may be uncomfortable doing less work and reducing fees, these reduced fees can be collected instead of written off. Using mediation and collaborative practice results in more satisfied clients who refer work to their attorneys.

Clients are generally anxious to restore order to their lives quickly. They will want to resolve issues, such as the custody of minor children, child support, and the right to possession of the marital home as soon as possible.

If the clients and their attorneys decide on traditional negotiation and litigation, ex parte orders may be obtained without giving the other party notice or an opportunity to respond, but only in emergency situations. Child custody and support orders are probably the most frequently entered ex parte orders. Restraining orders are often entered at the beginning of a divorce action to prevent the parties from hiding assets, changing beneficiaries, or terminating insurance coverage while the matter is pending. Other common temporary orders include orders for spousal support and attorney fees.

If the parties can agree on terms and are engaged in a traditional negotiation/litigation process, orders may be entered without either party filing a motion, or the parties may enter into binding agreements that are later incorporated into the divorce judgment.

The Friend of the Court can be a tremendous asset in resolving issues in a divorce case by way of alternative dispute resolution, investigation and recommendation, and referee hearings. Once an order has been entered regarding custody, support, parenting time, or spousal support, the Friend of the Court's enforcement division has authority to conduct hearings when orders are not obeyed and to make recommendations for enforcement. *See* MCL 552.501 et seq.

## II. Prepare and File Ex Parte Orders and Motions for Temporary Orders

### A. Ex Parte Orders

**§6.2** Ex parte orders are orders that one party obtains without giving the other party notice or an opportunity to respond. It is possible to obtain ex parte orders regarding matters such as child custody and support, concealment of assets, and maintenance of insurance coverage. However, ex

parte orders are only available in emergency situations, where the moving party can show that irreparable injury, loss, or damage will result unless the court issues an order that is effective immediately. *See* MCR 3.207(B). Child custody and support orders are probably the most frequently entered ex parte orders.

Some counties use standard forms for ex parte orders pertaining to minor children; in other counties, counsel prepares the proposed orders (see form 6.1). An ex parte order for child support, custody, or parenting time must include the following notice:

NOTICE:

1. You may file a written objection to the order or a motion to modify or rescind the order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. Even if an objection is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order.

MCR 3.207(B)(5).

All other ex parte orders must include notice that the ex parte order will automatically become a temporary order if the other party does not file a written request to modify or rescind and a request for a hearing. MCR 3.207(B)(6).

To obtain an ex parte order concerning minor children, file

- a verified complaint including allegations about the children (see form 4.3);
- a verified statement (SCAO form FOC 23);
- any affidavit or certification required by the county (see, e.g., form 6.2);
- the proposed ex parte order (form 6.1), and, in some counties, an income withholding order (SCAO form FOC 5); and
- additional forms as required locally (see, e.g., Wayne County's certificate of conformity, form 6.3).

The party submitting the first temporary order awarding child custody, parenting time, or support and the party submitting any final proposed judgment awarding child custody, parenting time, or support must serve the Friend of the Court and the parties with a Judgment Information Form (SCAO form FOC 100) and proof of service. This form, which contains personal identifying information, is separate from the court order and not a public document. MCR 3.211(F)(2). See §1.10 for further discussion of these forms.

An ex parte order is effective on entry but may not be enforced until the other party is served with notice. MCR 3.207(B)(3). The moving party under MCR 3.207(B)(2) must arrange for service of a true copy of the ex parte order on the other party as well as on the Friend of the Court if the case involves minor children or spousal support. See §6.14 on service.

An ex parte order remains in effect until modified or superseded by a temporary or final order. MCR 3.207(B)(4). However, a timely filed objection to the ex parte order will negate the effectiveness of the order until a hearing on the matter. If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed. MCR 3.207(B)(6).

For the entry of an ex parte order, take the order directly to the judge. Attach the judge's copy of the complaint and documents filed with it. Be sure to include in your filings any documents required by local practice and anything else necessary to establish the factual basis for the order.

Several steps can facilitate rapid signing and receipt of conformed copies in counties where the clerk does not provide true copies.

1. Once the judge is assigned, use the stamps available at the courthouse to stamp the judge's name on all the orders and supporting motions that the judge must consider.
2. Have sufficient copies of the complaint and separate motions in the file so that one of each can be left for the judge to review when he or she considers signing the orders.
3. Provide the judge's clerk with a stamped, addressed envelope in which conformed copies of the orders can be sent to your office. These can be invaluable if the original order subsequently gets lost or is misfiled by the clerk.

## **B. Temporary Orders Requiring a Hearing**

### **1. In General**

**§6.3** Non-emergency temporary orders require a hearing, unless the parties agree otherwise or fail to file a written objection or motion. *See* MCR 3.207(C)(2). If possible, the parties should attempt to negotiate their own temporary solutions rather than going to court, because the judge will not have much time to consider the subject matter of plaintiff's initial motion(s) before the hearing. *See* §§6.6–6.7 for discussion of the various methods that may be used to obtain temporary orders without going to court.

Plaintiff usually moves for temporary orders at the same time the complaint is filed and schedules the motion(s) for hearing in two to four weeks, depending on the court's docket. The motion must be filed at least 9 days before the time set for the hearing, if served by mail, or at least 7 days before the time set for the hearing, if served by delivery. MCR 2.119(C). Typical temporary orders provide for child custody, parenting time, child and/or spousal support, income withholding, preservation of assets, personal protection, and assistance in paying attorney fees.

The documents that must be filed are (1) the motion (see forms 6.4 and 6.5), (2) any corroborating affidavits, (3) the praecipe (a court form used in some but not all counties requesting that the matter be set for hearing; see form 6.6), and (4) a notice of hearing (see form 6.7). In cases that involve minor children or spousal support, a copy of all pleadings, the praecipe (if required in your county), and a notice of hearing must be filed with the Friend of the Court. Note that in Wayne County there is a separate praecipe for motions in the Friend of the Court (see form 6.8). Check with the court clerk for any additional local forms that might be required.

The party submitting the first temporary order awarding child custody, parenting time, or support and the party submitting any final proposed judgment awarding child custody, parenting time, or support must serve the Friend of the Court and the parties with a Judgment Information Form (SCAO form FOC 100) and proof of service. This form, which contains personal identifying information, is separate from the court order and not a public document. MCR 3.211(F)(2). *See* §1.10 for further discussion of these forms.

Motions for temporary orders in domestic relations cases must be verified, MCR 3.207(C)(1), and the attorney must sign as the preparer, MCR 2.114. If the party signs an acknowl-

edgment that he or she has read the pleadings and that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the pleading was well-grounded in fact, the signature indicates to the court that the party supplied the facts. If the facts later prove to be false, the judge will be able to determine whether the false representations are the result of overzealous advocacy or the client's perception of the case.

## 2. Restraining Orders

**§6.4** A restraining order is often entered at the beginning of a divorce action to prevent the parties from hiding assets, changing beneficiaries, or terminating insurance coverage while the matter is pending. If you plan to ask the court for a restraining order, include the factual basis for the relief in the divorce complaint or in a separate affidavit. *See* MCR 3.206(A)(7).

The court will be more inclined to grant the restraining order if it is mutual. Frequently the parties have no interest in engaging in the prohibited conduct and are amenable to having the orders restrict their behavior in exchange for saving the expense, trouble, delay, and uncertainty of a hearing. *See* form 6.9.

At the same time, you should take care to discuss with the client the limitations that such an order imposes. Once the order is entered, the client might not be able to withdraw money from his or her own accounts, even to pay you, without the permission of the other side. If the client is planning major purchases, such as a car or furniture, these events should be specifically excluded from the language of the order.

If you seek *ex parte* relief, i.e., entry of a restraining order without notice to the adverse party, (1) it must clearly appear from specific facts that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued; (2) the applicant's attorney must certify to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and (3) a permanent record or memorandum must be made of any nonwritten evidence, argument, or other representations made in support of the application. MCR 3.310(B)(1).

The restraining order must set forth the reasons for its issuance in specific terms and must describe in reasonable detail the acts restrained. MCR 3.310(C). The order is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. *Id.*

In domestic relations cases, unlike other cases, there is no requirement that a restraining order expire within some fixed amount of time or that it set a date for hearing. Domestic relations restraining orders do not expire automatically but continue in effect throughout the pendency of the action until modified or superseded by a temporary or final order. MCR 3.207(B)(4), (C)(5). Unless specifically preserved in the judgment, temporary orders terminate when the judgment is entered. MCR 3.207(C)(5).

If a restraining order is entered to maintain insurance coverage, you, as the attorney, should send a certified copy of the order to each insurance company that issued a policy. Send the copy by certified mail, return receipt requested, and enclose a cover letter explaining the impact of the order and a request to call you with any questions.

## 3. Personal Protection Orders (PPOs)

**§6.5** A personal protection order (PPO) must be obtained in an independent action. *See* §4.14. Technically the court in a divorce case has the authority under MCR 3.207 to enter a restraining order against abusive conduct. However, such a restraining order is not enforced in the