



**Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division**
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

September 9, 2014

TO: Michigan Court Forms Committee, Child Protective Proceedings and Juvenile Guardianship Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **September 18, 2014 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is the agenda for the September 18, 2014 meeting of the Michigan Court Forms Committee, Child Protective Proceedings and Juvenile Guardianship Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa in Lansing. A map and directions are provided.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. **Minor Corrections**

- A. A number of forms reference MCL 712A.13a(13) as being the basis for the release of information by the Department of Human Services ("DHS") to foster parents. However, following two recent amendments to MCL 712A.13a by 2012 PA 115 and 2012 PA 163, what was subsection 13 is now 15. Therefore, the references to MCL 712A.13a(13) will be updated to MCL 712A.13a(15) on the following forms: JC 11a (item 25); JC 11b (item 19); JC 17 (item 18); JC 19 (item 23); JC 49 (item 21); and JC 75 (item 16). These corrections will be put on file for modification when the form is changed for a substantive reason.

Similarly, the reference to MCL 712A.13a(12) on should be modified to subsection (14) on the following forms: JC 15. This correction will be put on file for modification when the form is changed for a substantive reason.

- B. On JC 17, the subparts of item 18 are not numbered. These subparts will be numbered, similarly to the way the same provision appears on JC 49.

2. **JC 05b, Order to Take Child(ren) into Protective Custody and Place (Child Protective Proceedings)**

- A. It has been suggested by Child Welfare Services that the format of findings in item 3.b. should be revisited. Some courts have not been properly putting the reasonable efforts findings in item 3.b.3. and the contrary to the welfare findings in item 3.b.5. This is partly due to the fact that the items used to be separate and in the opposite order (with contrary to the welfare coming first). Further, because it is the contrary to the welfare findings that have immediate funding implications in Title IV-E cases, it was suggested it may be better if this is item 3.b.3. and the reasonable efforts are item 3.b.5. As it stands right now, the items are consistent with the order they are in in both court rule, MCR 3.963(B)(1), and statute, MCL 712A.14b(1).

Additionally, it has been suggested that the phrase “reasonable efforts were made to prevent or eliminate the need for removal” should be bold in current item 3. It has also been suggested that current item 3.b.5 have the parenthetical (Specify.) in the same manner it appears after current item 3.b.3.

- B. A referee has suggested that JC 05b should be modified so that there is a way to indicate the order is an interim order when the referee signs it. MCR 3.963 indicates that if a referee finds the factors in MCR 3.963(B)(1) are met, the referee may issue an “interim placement order pending the preliminary hearing.” MCL 712A.14a, dealing with immediate removal of a child, indicates that a referee or judge shall be designated as contact when placement is sought for immediate removal. The statute also provides that, “[w]hen a placement order is issued by a designated referee, the order shall take effect as an interim order pending a preliminary hearing.” Should the form be modified in some way to indicate that when the referee signs the order it is an interim order?

3. **JC 11b, Order After Pretrial Hearing (Child Protective Proceedings)**

It has been suggested that it may be appropriate on this form, as part of item 22, to include a checkbox to indicate that placement shall continue until “disposition.” There is a similar checkbox on JC 11a. However, in 2006 the option for “disposition” was removed from the form after a comment that another form could be used. However, are there circumstances where the placement might be appropriate until disposition (such as if a plea is taken) such that this option should be included on JC 11b?

4. **JC 19, Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)**
JC 76, Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)

It has been suggested that both JC 19 and JC 76 be modified to clarify the process relating to the permanency planning goal. See MCL 712A.19a (permanency planning pre-termination); MCL 712A.19c (permanency planning post-termination); see also MCR 3.976 (permanency planning hearings).

On JC 76, it is suggested that item 10, pertaining to whether the permanency planning goal is appropriate, be expanded. It has been noted that some courts find items 9 and 10 confusing in that item 9 relates to the efforts that have already been made, but some courts confuse that with the future permanency planning goal, which may or may not have changed. To help clarify this, it is suggested that item 10 be modified to read, “The permanency planning goal listed above is appropriate is not appropriate and should be:” This item will also now be followed with a blank space for filling the new permanency planning goal, if the one listed in item 9 is determined to no longer be appropriate. This would clarify that item 9 relates to the current permanency planning goal and what has been done in the past, while item 10 would be used to modify the permanency planning goal, if necessary, or to indicate it remains appropriate moving forward.

On JC 19, a new item 18 would be added after current item 17 that tracks the language of the modified item 10 noted above. This would be used in the same general fashion, allowing item 17 to list the current permanency plan and efforts that have been made, and the new item 18 would allow the court to indicate whether the permanency planning goal remains appropriate and, if not, what should be changed.

5. **JC 23, Waiver of Summons/Notice of Hearing**

It has been suggested that this form should be modified to also inform the individual that there is no right to a jury trial in a termination of parental rights proceeding. Currently, the form does not include this information. However, MCR 3.920(B)(3) indicates that the summons should explain that there is no right to a jury at a termination proceeding. Given that this form is used to waive the right to a summons, it would seem appropriate to add such information on this form as well. Should the form be modified to add this?

Additionally, the citation at the bottom of the form needs to be updated. MCR 3.920(E) should be changed to MCR 3.920(F). Subpart (F) of the rule deals with waiver of notice and service. Subpart (E) deals with subpoenas.

6. **JC 84, Claims of Appeal and Order Appointing Counsel**

Staff from the Michigan Court of Appeals have indicated that a portion of the “Note to Court” is misleading and should be removed. Specifically, sentence three of the first

paragraph indicates what the court should do when the request for counsel is denied and provides: “If the respondent is financially able to provide an attorney, check item 4b; the claim of appeal must still be filed with the Court of Appeals because the request was timely.” This has resulted in some courts submitting the claim on behalf of individuals. However, it appears that the court rules contemplate the respondent filing his or her own claim of appeal where the appointment of counsel is denied.

This change was made based on the suggestion of the court forms committee in 2005. It was intended that the court would file the form with the Court of Appeals. It was intended that the form could be used under MCR 3.977(J)(2)(b) when the request was timely and an attorney appointed and under MCR 7.204 when the request was timely but an attorney was not appointed. The logic at that time was that a parent has a right to appeal pursuant to MCR 7.204(A)(1)(c). However, it seems problematic because a person denied appointment of counsel may choose not to file a claim of appeal with the Court of Appeals. The appellate rules generally indicate a party should file the claim of appeal. Under MCR 3.977(J)(2)(b), only where the order has appointed an attorney does the court forward the material to the Court of Appeals and it constitutes a timely claim of appeal under MCR 7.204.

Outside of that process, it appears that the appellant or their retained attorney (if one) would need to file with the Court of Appeals a claim of appeal, pursuant to MCR 7.204(B). MCR 7.204(C) also explains what is needed for the appeal, including the transcript.

Should this reference to the process be removed and replaced with language that more closely tracks the language found in the court rules?

7. **Should a New Form Be Created to Commit a Minor to the Agency When a Parent Dies During the Course of Termination Proceeding?**

It has been suggested that a new form should be considered for development. The form proposed would be used where the child is committed to the agency after a parent or parents die during the course of a termination proceeding. A child may be committed under MCL 400.203 where the child is within the court’s jurisdiction under MCL 712A.2. Sometimes PCA 322, Order Committing to Agency/DHS is modified and used, but there are a number of things on that form not applicable to a child protective case. Should a new form be created for use in this circumstance?

8. **Consideration of a New Form for Use for Removals under MCR 3.974(A)**

Last year, the committee determined a new form should be considered for use where the child is removed after a hearing conducted under MCR 3.974(A). A draft form will be prepared and distributed before the meeting for consideration.