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DATE: December 20, 2012

TO: Friends of the Court
cc: Circuit Court Judges
Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps

RE: Friend of the Court Staff Reporting of Suspected Child Abuse and Neglect and Information Sharing by Child Protective Services and Friends of the Court

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MCL 722.623 in the Child Protection Law (CPL) requires a person employed in a "professional capacity" by any friend of the court office to report suspected child abuse and neglect. Another CPL section provides that the Department of Human Services (DHS) must allow friend of the court (FOC) offices to access certain confidential DHS records. See MCL 722.627. The Friend of the Court Act requires FOC offices to notify DHS's Child Protective Services division of any procedural developments in certain FOC cases. See MCL 552.520.

The State Court Administrative Office (SCAO) has developed the attached memorandum to help FOC offices develop appropriate local policies and procedures for reporting child abuse and neglect and sharing information with DHS.

The attached memorandum supersedes SCAO's October 1, 2009, memorandum regarding FOC offices reporting child abuse and neglect and sharing information with Child Protective Services.

If you have questions about this memorandum, please contact Timothy Cole at colet@courts.mi.gov or Elizabeth Stomski at stomskie@courts.mi.gov.

Attachment

Friend of the Court Office Professional Employees are Mandated Reporters

MCL 722.623 requires any person employed in a "professional capacity" in any friend of the court (FOC) office who has reasonable cause to suspect child abuse or neglect to report the abuse and neglect to Child Protective Services (CPS). See Section A of this memorandum for information about determining who qualifies as a person employed in a professional capacity in any FOC office. See Section C for the procedures for reporting child abuse and neglect.

Child Protective Services Must Notify Friend of the Court of Investigations and Dispositions

MCL 722.628 (18)-(21) imposes several notice and information requirements on CPS.

CPS must determine if there is an open FOC case[1] regarding a child who is suspected of being abused or neglected. If there is an open FOC case, and if the CPS investigation results in one or more of the following findings or actions, then CPS must notify the local FOC office of:

- A CPS finding that indicates child abuse or neglect occurred, based on a preponderance of the evidence.
- An emergency removal of the child because of abuse or neglect.
- The court taking jurisdiction on a petition while the child continues to reside in his or her own home, but under the supervision of Department of Human Services (DHS).
- Removal of one or more children residing in the home while one or more children remain in the home.
- A CPS finding that any other circumstances jeopardized the child's safety.

In addition to notifying the FOC office of its investigation and the child's placement MCL 722.628 provides that CPS may notify the FOC if a parent has made three unfounded child abuse reports in one year or five such reports over "several years."[2]

MCL 722.627(2)(t) removes restrictions that prohibited the court from accessing CPS information.

If the FOC office receives notice from CPS as required above, the FOC office must notify CPS of procedural developments in the FOC case until a final order is entered regarding the pending custody or parenting time dispute. See Section D for information on how to report this information.

[1] CPS intends to determine whether an open FOC case exists by asking the parent if the parent has an open FOC case. If either parent identifies an open FOC case, CPS will send the required notifications to the FOC office.
[2] CPS has indicated that it will *not* report parents who make unfounded child abuse complaints to the FOC. CPS believes that doing so would violate the confidentiality of the reporting person (MCL 722.625).

Best Practices: Friend of the Court Compliance with Mandated Reporting

The State Court Administrative Office (SCAO) recommends that FOC offices develop an internal policy to comply with both MCL 722.623 and MCL 552.520. A model policy is provided with this memo. Please remember when developing the FOC policy that there are sanctions for violating MCL 722.623. See Section G for more information on sanctions. To avoid sanctions and limit liability, courts should be inclusive when designating persons employed in a professional capacity in any FOC office. The following information may be helpful in developing local policies.

A. A Person Employed in a Professional Capacity in Any Office of the Friend of the Court

1. MCL 722.623 requires "a person employed in a professional capacity in any office of the Friend of the Court" to report child abuse or neglect. In order for FOC employees to know if they are mandated reporters, they must know whether they are considered "employed in a professional capacity." The Child Protection Law does not define "employed in a professional capacity in any office of the Friend of the Court."

   In the absence of a statutory definition, courts may take one of the following approaches when determining who is employed in a "professional capacity:"

   - Designate all FOC employees as mandated reporters.
   - Designate all FOC employees who have contact with parties as mandated reporters.
   - Designate employees in specific FOC positions as mandated reporters.
   - Designate individuals whose job descriptions include the term "professional" as mandated reporters.
   - Designate individuals whose positions in a collective bargaining agreement are classified as professional as mandated reporters.
   - Designate any employee whose qualifications for his or her FOC position include postgraduate training that would allow the employee to discern physical or emotional abuse (e.g., masters or doctorate degree in psychology or sociology) as a mandated reporter.
   - Designate FOC employees based on any other factor the court chooses to use to distinguish professional positions from nonprofessional positions as mandated reporters.

The fact a court has not designated a particular FOC employee as a mandated reporter does not mean that the employee is not required to report suspected abuse or neglect. A court may determine that the statute covers employees who are not officially designated by the court, and therefore, they may be subject to the failure-to-report sanctions contained in MCL 722.633. See Section G for more information on sanctions.

2. Special circumstances: There may be special circumstances that make it more difficult to determine how the laws should be applied.

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- **Domestic Relations Referees:**

  Referees present special concerns because some courts include domestic relations referees in the FOC budget and place them under the management of the FOC director, while other courts do not. It is unclear if the Michigan Legislature intended for all domestic relations referees to be mandated reporters of child abuse and neglect or only those physically located in a FOC office. It is SCAO's understanding that when the proposed legislation was being discussed, it was intended that all domestic relations referees be considered mandated reporters. Because of this, and because referees are provided for in the Friend of the Court Act, (MCL 552.508), it may be in the court's best interests to include all domestic relations referees when designating those employed in a "professional capacity."

- **Friend of the Court Alternative Dispute Resolution Provider:**

  MCL 552.513(3) provides:

  Except as provided in subsection (2), a communication between a friend of the court alternative dispute resolution provider and a party pertaining to the matter subject to resolution is confidential as provided in court rule.

  MCR 3.216(H)(8) refers to MCR 2.412, which provides an exception for confidentiality if.

  1. A statute or court rule requires disclosure.[3]
  2. The communication involves a claim of abuse or neglect of a child.[4]

  In addition, MCL 722.631 requires the reporting of child abuse and neglect. It provides:

  Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act.

B. <u>Reasonable Cause to Suspect Child Abuse or Neglect</u>

There is no statutory definition of what it means to find "reasonable cause to suspect child abuse or neglect." Mandated reporters (other than those employed by CPS) are not

[3] MCR 2.412(D)(2)
[4] MCR 2.412(D)(9)(a)

required to determine whether child abuse or neglect has *actually* occurred. SCAO recommends that those individuals designated as mandated reporters report child abuse or neglect when their rational observations, professional training, experience, or any other factor causes them to suspect child abuse or neglect has occurred.[5] Mandated reporters may also consult with DHS employees about child abuse and neglect issues before making a report. A mandated reporter does not satisfy the legal obligation to file a report with CPS by simply having a conversation with a DHS employee; a report must be filed to meet the statutory requirement (MCL 722.623).

For domestic relations referees, SCAO suggests the following:

1. If a referee has reasonable cause to suspect child abuse or neglect, the referee must report it. A referee has reasonable cause to suspect child abuse or neglect when the referee witnesses the child abuse or neglect, when child abuse or neglect is admitted, when a child or other witness reports acts of child abuse or neglect, or when the referee knows of other evidence of child abuse or neglect, whether or not it is sufficient to satisfy an evidentiary standard in the matter pending before the referee.

2. If a referee conducts a hearing in which allegations of child abuse or neglect are made, the referee is not obligated by the mandated reporter law to conduct further investigation to determine if child abuse or neglect occurred. Based on the allegations, the referee should determine if he or she has reasonable cause to believe abuse or neglect occurred.[6]

   For information on definitions of child abuse and neglect, please see: http://www.michigan.gov/documents/dhs/Pub-112_179456_7.pdf

   For indicators of child abuse and neglect, please see: http://www.michigan.gov/dhs/0,1607,7-124-5452_7119_7193-15254--,00.html

   DHS maintains a website for mandated reporters: www.michigan.gov/mandatedreporter.

C. How to Report Suspected Child Abuse or Neglect to Child Protective Services

Mandated reporters must *immediately* make an *oral* report by telephone to 855-444-3911.[7] CPS intake personnel will want the following information, if available:

- Name(s) and address of primary caretaker (parent and/or guardian).
- Names and identifying information for all household members, including the alleged

[5] A Michigan Court of Appeals case addresses the mandated reporter's responsibility to report child abuse and neglect. See *Lee v Detroit Medical Center, 285 Mich App 51 (2009).*

[6] SCAO contacted several states whose judges are mandated reporters of child abuse or neglect to inquire about judges' reporting requirements and practices. SCAO learned that most judges in those states report if proof of the child abuse or neglect is substantiated during the hearing. When the child abuse or neglect cannot be substantiated, judges in those states often do not report. Some judges use what amounts to a "probable cause" standard.

[7] Mandated reporters of child abuse and neglect are considered "mandated" at all times, even when they are not working.

victim and perpetrator.

- Birth date and race of all members of the household.
- Whether the alleged perpetrator lives with the child.
- Address where the alleged incident happened if different than the home address.
- Summary of the child's disclosure and its context if the child disclosed the incident.
- History of the child's behavior (any background information the mandated reporter knows related to the report that is being filed).
- Reasons why child abuse or neglect is suspected.

Within 72 hours after making the oral report, the mandated reporter must file a written report with CPS. The written report must include the following information:

- Name, birth date, social security number, sex, and race of the child, mother, and father.
- Child's address.
- Name of the alleged perpetrator of abuse or neglect and relationship to child.
- Person(s) the child was living with when the abuse or neglect occurred.
- Address, city, and zip code where the abuse or neglect occurred.
- Injury or conditions and reason for suspicion of abuse or neglect.
- Source of the complaint.
- Reporting person's name, organization, and address.

The written report should be faxed to 616-977-1154 or 616-977-1158, or mailed to Centralized Intake for Abuse and Neglect, 5321 28th St. Court, SE Grand Rapids, MI 49546, or sent by email to DHS-CPS-CIGroup@michigan.gov within 72 hours of submission of the oral report. Mandated reporters are encouraged to use the DHS-3200 Form found at http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf.

Mandated reporters can use the Mandated Reporter's Hotline (1-877-277-2585) if they think DHS has not been adequately responsive to their concerns. These concerns will be investigated and a response will be provided.

Individuals employed in a professional capacity by a FOC office are not required by MCL 722.623(1) to provide a copy of the mandated report to the FOC director. However, SCAO recommends that a copy of the report be maintained. Please see Section H: Maintaining a Copy of the Written Report; Reporter Confidentiality.

D. Friend of the Court Reporting of Procedural Developments

MCL 552.520 requires that if the FOC office receives notice from CPS regarding a child abuse investigation, the office must notify CPS of procedural developments in the FOC case until a final order regarding the pending custody or parenting time dispute order is entered.

MCL 552.520 does not define "procedural developments." If the FOC office has received a notice from CPS, SCAO recommends that the FOC office forward to CPS any

custody or parenting time notices sent in the FOC case, motions that are filed to establish or modify custody or parenting time, or any orders that are issued in the case.[8]

E. Providing Information to the Court and Attorneys of Record

If the FOC receives notice (as required by MCL 722.628) from CPS regarding a child involved in an open FOC case, the FOC office should inform the court (the domestic relations referee and/or family division judge assigned to the court case) and the attorneys of record about the CPS notification.

F. Redirecting Child Support

If the child's placement is changed as a result of juvenile court disposition or CPS investigation, and there is a current child support order in place, the FOC may consider redirecting the child support to the new caregiver. (See SCAO Administrative Memorandum 2005-04*)*. A review by the FOC under MCL 552.517 could result in the court ordering *both parents* to pay child support and provide health care coverage. (See SCAO Administrative Memorandum 2006-03*)*.

G. Penalties for a Mandated Reporter's Failure to Report Child Abuse or Neglect; Immunity from Making a Report

It is important to establish clear policies indicating which employees are "employed in a professional capacity in any office of the friend of the court," and, therefore, mandated reporters, because there are penalties for failing to report. Mandated reporters who fail to file a required report of suspected abuse or neglect may be subject to both civil and criminal liability. In a civil action, the mandated reporter may be held liable for all damages that any person suffers due to the failure to file a report. In a criminal action, a mandated reporter may be found guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both. A mandated reporter does not satisfy the legal obligation to file a report with CPS by notifying only his or her own supervisor or some other administrator within the same agency (MCL 722.623). A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other statutory requirement is immune from civil or criminal liability (MCL 722.625).

H. Maintaining a Copy of the Written Report; Reporter Confidentiality

SCAO recommends that FOC offices maintain a group file of all written mandated reports related to FOC cases and CPS investigation results. The file containing mandated reports and CPS investigation results is confidential, and only the FOC director or the director's designee should have access to the file. Group files are generally defined as

[8] Although abuse and neglect complaints are processed centrally, FOC offices should forward custody and parenting time notices, motions, and court orders to the DHS office in the county where the child resides. SCAO recommends that FOC offices make a note in the MiCSES system of the documents (e.g., copies of motions, court orders) sent to CPS, and the date the documents were transmitted.

records the court is required to keep but which are not part of a case file.[9] The mandated reports and CPS investigation notification are noncase records, which means they are not records filed in the FOC case file and, therefore, are not subject to inspection by anyone outside of the FOC office. Mandated reporters may request a copy of their mandated report or CPS investigation notification from the FOC director or designee. For more information about group files, please see SCAO's Case File Management Standards and SCAO's Record Retention Schedule, Item Number 16.010.

SCAO's Record Retention Schedule recommends that noncase records be retained for a minimum of six years. This record retention would surpass the statute of limitations for civil and criminal misdemeanor litigation.

With limited exceptions, the identity of a reporting person is confidential under the law. CPS may disclose the reporter's identity with the consent of that person or by judicial process (MCL 722.625). The reporter's identity also may be disclosed to those listed in Section 5 of the Child Protection Law (MCL 722.625).

I. CPS Reporting Investigation Results to Mandated Reporters

After a mandated reporter submits a written report of suspected child abuse or neglect, CPS must inform the mandated reporter in writing about CPS's investigation results of the case,[10] including:

- What determination CPS made after its investigation and the rationale for any decision made.
- Whether legal action was commenced and, if so, the nature of that action.
- Notification that the information being conveyed is confidential.

J. Friend of the Court Offices Maintaining Statutory Enforcement Responsibilities

MCL 722.628(18) and (19) require CPS to notify the affected office when there is an open FOC case and CPS has conducted an investigation in which a preponderance of evidence indicates that child abuse or neglect has occurred or certain dispositions have been ordered by the court.

SCAO recommends that if an FOC office is aware of CPS involvement because of child abuse or neglect and the parent accused of child abuse or neglect submits a custody or parenting time complaint, the FOC office should continue to enforce the current custody and parenting time order, but should select an enforcement remedy that will not endanger the child or the parents. SCAO Administrative Memorandum 2002-11 cautions that, "Selection of an enforcement remedy should also be influenced by the safety concerns that arise when one party has committed a crime against a child or the other party, or has

[9] SCAO's Case File Management Standards, Component 18.

[10] Referees who report possible child abuse or neglect may be asked to conduct judicial hearings involving families they reported for child abuse and neglect. When CPS provides the results of the investigation, it is recommended that referees not view the disposition or CPS's investigation results, as this would result in the referee receiving ex parte information about a case. It is recommended that CPS's investigation results be placed in the FOC confidential noncase group file.

violated another court order (such as a personal protection order) in exercising or asserting custody or parenting time rights." With the exception of applying make up parenting time, FOCs may want to consider an enforcement remedy provided for in MCL 552.641.[11]

K. Coordinating Friend of the Court and CPS Services

SCAO encourages FOC offices to meet with local CPS staff to discuss the requirements for mandated reporters, information sharing, local practices, staff responsibilities, local resources, and related issues.

[11] CPS could have provided counseling or other services instead of filing a petition to remove the child. If CPS takes action short of a petition to remove the child, then CPS is indicating that with services in place, child abuse or neglect should not occur and the child is safe with that parent.

Model Policy
Mandated Reporting of Child Abuse and Neglect

A. Designating Mandated Reporters of Child Abuse and Neglect

Pursuant to MCL 722.623, persons employed in a professional capacity in any office of the friend of the court are mandated reporters of child abuse or neglect. The following employees are designated as mandated reporters of child abuse and neglect: [List Position and Titles])

B. Oral Report of Child Abuse and Neglect

All mandated reporters of child abuse and neglect who have reasonable cause to suspect child abuse and neglect shall immediately make an oral report by telephone or in person to the Department of Human Services (DHS). DHS will ask for the following information:

- Name(s) and address of primary caretaker (parent and/or guardian).
- Names and identifying information for all household members, including the alleged victim and perpetrator.
- Birth date and race of all members of the household.
- Whether the alleged perpetrator lives with the child.
- Address where the alleged incident happened, if different than the home address.
- Summary of the child's disclosure and its context, if the child disclosed the incident.
- History of the child's behavior (any background information the mandated reporter has which is related to the report that is being filed).
- Reasons why child abuse or neglect is suspected.

C. Written Report of Child Abuse and Neglect

All mandated reporters who have reasonable cause to suspect child abuse and neglect must file a written report with DHS within 72 hours after making the oral report. The written report must include the following information:

- Name, birth date, social security number, sex, and race of the child, mother, and father.
- Child's address.
- Name of the alleged perpetrator of abuse or neglect and relationship to child.
- Person(s) the child was living with when the abuse or neglect occurred.
- Address, city, and zip code where the abuse or neglect occurred.
- Injury or conditions and reason for suspicion of abuse or neglect.
- Source of the complaint.
- Reporting person's name, organization, and address.

The written report should be faxed to 616-977-1154 or 616-977-1158, or mailed to Centralized Intake for Abuse and Neglect, 5321 28th St. Court, SE Grand Rapids, MI 49546, or sent by email to DHS-CPS-CIGroup@michigan.gov within 72 hours of submission of the oral report. Mandated reporters are encouraged to use DHS-3200 Form found at http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf

D. Maintaining Copies of the Mandated Reports and Department of Human Service Reports

Copies of the mandated reporter's child abuse or neglect written reports and the Department of Human Services Child Abuse and Neglect Investigation Results should be provided to the FOC director or _____ and shall be maintained in a confidential group file located in _____. Only the FOC director or _____ shall have access to these records. These records shall be maintained for a period of six years.

E. Providing Procedural Developments

If the FOC receives notice of a Department of Human Services CPS investigation or disposition, and there is an open FOC case within the FOC office, the FOC office will forward to CPS motions that are filed to establish or modify custody or parenting time, or any orders that are issued in the case