



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-8036

Daniel J. Wright
Director

MEMORANDUM

DATE: May 29, 2008

TO: Circuit Court Judges
Presiding Family Division Judges

cc: Circuit Court Administrators
Family Division Administrators

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2008- 04
Notice Requirements in Child Protective Proceedings

The federal law, Safe and Timely Interstate Placement of Foster Children Act of 2006, requires each state's highest court to implement a rule to ensure that foster parents, preadoptive parents, or relatives providing care (collectively referred to in this memo as "care providers") receive notice of hearings in child protective proceedings. The Michigan Supreme Court complied with this federal requirement by amending [MCR 3.921](#) to direct courts to ensure that proper notice is provided to care providers.

This memorandum informs courts of the requirement, and assists courts in developing notice procedures. If courts have any questions, or would like additional information regarding this memorandum, please contact Kelly Howard at howardk@courts.mi.gov or Angel Sorrells at sorrellsa@courts.mi.gov, or by calling (517) 373-1956.

A. Background

The requirement to provide notice of hearings to care providers is not new. The 1997 Adoption and Safe Families Act (ASFA) required states to provide the foster parent, preadoptive parent, or relative providing care with timely notice of, and an opportunity to be heard in, any review or hearing held with respect to the child. [[42 USC 675\(5\)\(G\)](#)]

The Michigan Department of Human Services (DHS) established procedures to comply with ASFA, and programmed a statewide child-welfare computer system, the "Services

Worker Support System” (SWSS), to generate the required notices. However, there are limitations within the existing procedures that make compliance difficult. Most notably, private agencies do not have access to SWSS. Instead of using SWSS to generate a notice, private agencies are required to provide hearing information to a central DHS “monitor,” who then forwards the information to the care providers in the case. This process is time-consuming, and sometimes results in care providers not receiving timely notice, especially when hearings have been rescheduled. In addition, the SWSS computer system can verify that a notice was generated, but cannot verify if the notice was actually sent.

In 2002, the federal government’s Child and Family Services Review (CFSR) of Michigan’s program identified our notice provision as an “Area Needing Improvement.” Specifically, the review determined:

This item was assigned a rating of Area Needing Improvement because the findings of the review indicate an inconsistent notification of foster parents, preadoptive parents and relative caregivers due in part to a lack of clarity regarding the responsibilities and process for notifying these parties.

The federal government then added an additional notice requirement in the 2006 Safe and Timely Interstate Placement of Foster Children Act (Public Law 109-239). The act requires, as a condition of receiving Court Improvement Grants, that the state’s highest court *implement a rule* to ensure that care providers receive notice of hearings in all child protective proceedings. [[42 USC 629h](#)] A Federal Program Instruction, published February 22, 2007, clarified that *the court’s responsibility is to ensure that notice is provided, but the courts themselves are not required to issue the notices.*¹

B. Michigan Court Rule 3.921

In response to the 2006 federal legislation, the Michigan Supreme Court amended [MCR 3.921](#), effective May 1, 2007, to require courts to ensure that care providers receive notice of each child protective hearing.

[MCR 3.921\(B\)](#) was amended by adding subsections (1)(g) and (2)(k) as follows:

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

*** (a) – (f) omitted.

(g) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state.

¹ See [ACYF-CB-PI-07-03](#).

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

*** (a) – (j) omitted.

(k) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state.

C. Method of Providing Notice

The 2002 federal CFSR auditors found that Michigan's notification procedures were inconsistent because it was not clear *who* should notify the care providers. To address this concern before the next federal CFSR in 2009, the State Court Administrative Office (SCAO) and DHS have signed a Memorandum of Understanding (MOU) stating that DHS will provide the notice to the care providers once DHS receives notice of the court hearing.² This is the most practical solution because DHS, not the court, maintains the contact information for the care providers.

SCAO recommends that, in order to comply with the time-of-service requirements in [MCR 3.920](#), courts provide notice of the hearing to DHS in a timely manner (e.g., 28 days before the hearing) so that notice of a hearing may be given to the care providers within the time required by the court rule.

Although the MOU is now in place, to ensure compliance with [MCR 3.921](#), SCAO recommends that courts inquire on the record whether DHS provided notice of the hearing to the care providers. If courts determine through this inquiry that notice has not been provided to the care providers, SCAO recommends reminding the DHS case worker that the MOU makes it the department's responsibility to provide notice.

If courts have local agreements with their DHS branch office ensuring that notice is provided to the care providers as required by the court rule, SCAO recommends courts honor that local agreement and continue the current practice.

² A copy of the MOU is attached.



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Director

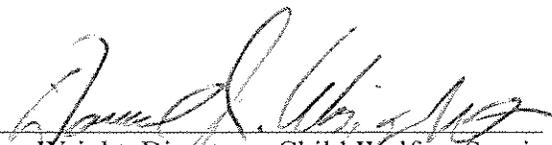
Memorandum of Understanding

Notice to Foster Parents, Preadoptive Parents, and Relative Care Providers Regarding Hearings in Child Protective Proceedings

Pursuant to 42 USC 629h and 45 CFR 1356.21(o), the state of Michigan must provide a child's care giver (e.g., the foster parents, preadoptive parents, or relative care providers) with timely notice of, and an opportunity to be heard in, certain court hearings related to a child removed from the home during a child protective proceeding. To comply with these federal requirements, the Michigan Supreme Court adopted MCR 3.921(B), which states that the court shall ensure that these individuals are notified of each hearing in a child protective proceeding.

In the majority of out-of-home care cases, the Michigan Department of Human Services (DHS) is responsible for the child's placement decisions. Generally, the courts are not provided with the caretaker's current contact information.

Therefore, the State Court Administrative Office and the DHS agree that, upon receiving notice of a court hearing in a child protective proceeding, the DHS will provide timely notice of each hearing to the affected child's foster parents, preadoptive parents, and relative care providers. The notice will include the date, time and location of each hearing.



Dan Wright, Director – Child Welfare Services
State Court Administrative Office



Date



Ismael Ahmed, Director
Department of Human Services



Date