

AMcomment - ADM File No. 2014-49

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Subject: ADM File No. 2014-49

In reference to ADM File No. 2014-49

As amended, MCR 3.965(B)(8) provides as follows: "The court must advise a nonrespondent parent of his or her right to *seek* placement of his or her children in his or her home." (emphasis added) The proposed rule runs contrary to the holding of In re Sanders which provides the following:

"Adjudication protects the parents' fundamental right to direct the care, custody, and control of their children, while also ensuring that the state can protect the health and safety of the children. Admittedly, in some cases this process may impose a greater burden on the state than would application of the one-parent doctrine because "[p]rocedure by presumption is always cheaper and easier than individualized determination." Stanley, 405 U.S. at 656-657. But as the United States Supreme Court made clear in Eldridge, constitutional rights do not always come cheap. The Constitution does not permit the state to presume rather than prove a parent's unfitness "solely because it is more convenient to presume than to prove." Stanley, 405 U.S. at 658.

We accordingly hold that due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship."

Nonrespondent parents don't have the right to *seek* placement, they have the right to direct care, custody, and control of their children. Through the court rule's use of the word "seek", the rule implies that the court has the authority to withhold custody of the child from the parent, even though the state is not challenging the fitness of the parent. "Seek" should be removed from the rule.

Respectfully submitted,
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