



**Michigan Supreme Court
State Court Administrative Office**

Trial Court Services Division

Michigan Hall of Justice
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August 28, 2008

TO: Hon. Judy Hartsfield, 3rd Circuit Court
Pamela Jarvis, Probate Register, Barry County Probate Court
Hon. R. Terry Maltby, Sanilac County Probate Court
Johanna O'Grady-Ward, 3rd Circuit Court
David C. Rauch, Court Administrator, Charlevoix County Probate Court
Hon. Fred Mulhauser, Emmet/Charlevoix County Probate Court
Sheryl Thompson, Genesee County DHS
Hon. Karen Tighe, Bay County Probate Court
Linda S. Weiss, 42nd Circuit Court

FROM: Amy L. Byrd

RE: Materials for September 18, 2008 Michigan Court Forms Committee Meeting

PLACE: State Court Administrative Office (Conference Room 5N-58), Lansing (map enclosed)

Below is the agenda for the September 18 meeting for the Family Division of the Circuit Court Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact me at least two days before the meeting.** We are located at 925 W. Ottawa. A map has been provided.

Although documentation is provided with the agenda, it would be helpful to bring a copy of the juvenile code and the Michigan Court Rules.

A. General Court Forms

1. MC 28, Notice to Prior Court of Proceedings Affecting Minor(s)

Standard language for the certificate of mailing was applied to this form in error. Before changing the certificate of mailing back to its previous format, there are several questions for discussion. First, is preparation and service of this notice a "matter of practice" in this particular instance, and if so, would MCR 3.205 supersede MCL 712A.3a pursuant to MCR 1.104 or do both the statute and the court rule apply? Second, because service on parties or their attorneys is required generally by MCR 2.107(A)(1) and this form is used in more than just child protective and delinquency proceedings, should this notice also be served on the parties or does only MCR 3.205 apply?

2. **MC 316, Change of Venue**

A suggestion has been made to adapt this form for use in family division cases.

3. **PC 51, Petition to Change Name**

The Michigan State Police Criminal Records Division has pointed out that the address on the special instructions for the name change petition need to be corrected.

4. **PC 52, Order Following Hearing on Petition to Change Name**

A suggestion has been made to either revise this form to be used under both statutory law and common law or to create a separate order for name change by common law. Attached is the relevant Michigan case law.

Also, there should be a check box in front of item 12 because the petition may be dismissed.

Finally, the Note to the Clerk on the second page needs some revision: reference to the "central records division" of the Michigan State Police should be changed to "Criminal Records Division" and the last bullet should be reviewed for continued accuracy.

B. Adoption Forms

5. **PCA 301, Petition for Adoption**

PCA 301a, Petition for Direct Placement Adoption

PCA 330, Statement of Parent/Guardian Transferring Physical Custody of Child for Adoption

PCA 340, Statement of Identifying Information

A concern has been raised about the propriety of providing a signature line on forms for a "person assisting petitioner" or an "agency." It appears this would encourage the unauthorized practice of law in contravention of MCL 600.916. The above forms have been identified as containing such a signature line. Should these references be deleted from these forms?

6. **PCA 323, Advice of Rights After Order Terminating Parental Rights**

A correction is needed to the citation on the foot of the form from MCL 710.2 to MCL 710.27.

C. Juvenile and Child Protective Forms

7. **Servicemembers' Civil Relief Act**

A suggestion has been made that the forms used under the Juvenile Code should be modified to include provisions that prevent courts from moving ahead in litigation matters

against servicemembers who are deployed until certain safeguards are met, such as submission of a military/nonmilitary affidavit, the appointment of counsel for an absent respondent who appears to be in the military, and the staying of proceedings when it appears a respondent is in the military. Is it necessary to modify the forms, or is this a matter of court procedure separate from the forms?

8. JC 04b, Petition (Child Protective Proceedings)

A request has been made to add space for DHS to list the reasonable efforts that have been made. This would make the form a two-page form. If this is undesirable, would an instruction in item 2 suffice instead?

9. JC 05a, Order to Apprehend and Detain

A correction is needed to the citation in item 3(c) from MCR 712A.18 to MCL 712A.18.

10. JC 11a, Order After Preliminary Hearing (Child Protective Proceedings)
JC 19, Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)
JC 63, Order Terminating Parental Rights (Child Protective Proceedings)
JC 75, Order Following Emergency Removal Hearing (Child Protective Proceedings)
JC 76, Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)

These forms are affected by the passage of Public Acts 199, 200, and 203, effective immediately. Specifically, JC 11a, JC 63, and JC 75 are affected by 2008 PA 199, JC 19 is affected by 2008 PA 200, and JC 76 is affected by 2008 PA 203. Drafts of the suggested changes are attached.

Also, with regard to JC 11a, there are several other questions:(1) is it necessary to provide check boxes for "does not" and "should not," (2) should there be a date for the prior order in item 12a, and (3) should there be some indication that items 18 and 24 correspond to one another?

11. JC 14a, Order of Disposition, In-Home (Delinquency Proceedings)

It has been suggested that the note at the foot of JC 14a be either revised or removed to avoid misinterpretation by juveniles that fingerprints will be destroyed for all dismissals. One suggestion is: "In some instances, your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of a dismissal. For details, see MCL 28.243."

Also, there is a question whether item 5 should be an option and should the form be altered for situations when the court dismisses the petition at a pretrial hearing.

12. **JC 38, Order for Reimbursement
New Form, Order for Restitution**

A suggestion has been made to either include a section on this form for restitution or to create a separate order for restitution. There are opinions that a separate judgment must be entered when restitution remains unpaid when a juvenile is being discharged from probation. It is also believed that a separate order of restitution is necessary. However, by operation of law, an order for restitution (whether by itself or incorporated in the order of disposition) remains effective until satisfied and it can be enforced in the same manner as a civil judgment without the need for entering a separate civil judgment. Is it preferred to have a separate order of restitution even though unnecessary?

13. **JC 44, Advice of Rights After Order Terminating Parental Rights**

A suggestion has been made to include a place on the form to indicate who's rights are being terminated.

14. **JC 59, Order of Adjudication (Delinquency Proceedings)**

A suggestion has been made to add a statement that the offense adjudicated is abstractable. Currently, this language appears on the order of disposition as a finding to remind the court that this should have been done after adjudication. It is believed that this reminder should be on the order of adjudication. See item 9 of JC 25 for specific language, which says: "The offense adjudicated is abstractable to the Secretary of State (under 257.625[20][a], 257.732, 324.80131, 324.81134[12], 324.81135[7], 324.82157, or 333.7408a[12]). The juvenile's driver's license number is _____."

15. **JC 66, Application to Set Aside Adjudication and Order**

The following language appears in the instructions for MC 227, Application to Set Aside Conviction: "[a]lthough an adjudication for a nontraffic offense reportable to the Secretary of State may be set aside by the court, as stated in MCL 257.732(22), the court cannot order the removal of the adjudication from the driving record." Should the form be revised to include this same statement?

Also, the address for the Michigan State Police Central Records Division needs to be updated and it is suggested that the proof of service be revised to no longer allow for leaving a copy of the application with the Attorney General or the Michigan State Police.

16. **JC 70, Judgment of Conviction (Designated Cases)**

A suggestion has been made to revise the notice of firearms restriction on JC 70. Currently, the term "firearm" is followed by a parenthetical that was intended only to as an example of certain kinds of firearms. However, that parenthetical has caused some questions, so it has been suggested that it be changed to say "(as those terms are defined under federal and state law)."

17. JC 74, Order of Probation (Designated Case)

A suggestion has been made to revise the notice of firearms restriction on JC 74. Currently, the term “firearm” is followed by a parenthetical that was intended only to as an example of certain kinds of firearms. However, that parenthetical has caused some questions, so it has been suggested that it be changed to say “(as those terms are defined under federal and state law).”

Also, the citation on the second page needs to be corrected from MCL 712A.18(1)(n) to MCL 712A.18(1)(m).

18. JC 90, Order Correcting Identifying Information (Child Protective Proceedings)

Last year the committee approved a suggestion to develop a statewide order to correct identifying information about children and their parents as this information appears in the legal file and requested that the draft be typeset for review in 2008. The new draft is provided.

19. New Form, Settlement Offer and Notice of Acceptance

A suggestion has been made to develop a statewide form for recording plea agreements. A draft is provided

20. New Form, Motion for Prisoner Participation

A request has been made to consider developing a motion for prisoners to use to request participation in family division proceedings. No draft has been provided.

Attachments

cc: Steven D. Capps, Director, Trial Court Services
Anne Boomer, Supreme Court
Sally LaCross, Supreme Court
Dawn Childress, Trial Court Services
Traci Gentilozzi, Trial Court Services
Jennifer Warner, Trial Court Services
Judicial Information Systems
Regional Administrators