



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

May 18, 2009

TO: Michigan Court Forms Committee – Circuit Court Family Division Section

FROM: Amy L. Byrd, Forms and Records Manager

RE: Agenda and Materials for **June 2, 2009 Meeting**

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

Below is the agenda for the June 2 meeting for the Circuit Court Family Division 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.** Please note that our office is located at 925 West Ottawa. A map and directions are provided.

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

1. JC 11a, Order After Preliminary Hearing (Child Protective Proceedings)

The proposed change to this form implements amendments in 2008 PA 199 with regard to automatic suspension of parenting time when a petition to terminate parental rights is filed.

2. JC 19, Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)

The proposed changes to this form implement amendments in 2008 PA 200 with regard to initiating proceedings to terminate the parental rights to children and the conditions under which the court is not required to order the agency to do so and with regard to appointment of a juvenile guardian when it is in the best interests of the children to do so. The changes also incorporate the provisions in MCR 3.979 with regard to juvenile guardianships, including appointment, termination of a juvenile guardian, and revocation of a juvenile guardianship.

The Department of Human Services recommends that reference to MCR 3.979(A)(3) be removed from item 15 because this form is not used in situations where parental rights have not yet been terminated. It also recommends that the second box in item 21 be made clearer. Originally, all of item 21 was part of 20, so this item would have read “The child(ren) is/are continued in the protective/temporary custody of this court, and . . . ___ placed under guardianship pursuant to MCR 3.979(B).” Item 21 should probably still remain as part of item 20 instead of being a separate item 21.

3. JC 63, Order Terminating Parental Rights (Child Protective Proceedings)

The proposed change to this form implements amendments in 2008 PA 199 with regard to best interests of the children. Judges attending a Judicial Symposium made suggestions to separate the two criteria for terminating parental rights in item 8. In its current form, it implies that the best interests of the children are “clear and convincing evidence,” which is not the case. The rule was intentionally silent in this regard.

4. JC 75, Order Following Emergency Removal Hearing (Child Protective Proceedings)

The proposed changes to this form implement amendments in 2008 PA 199 with regard to automatic suspension of parenting time when a petition to terminate parental rights is filed, as well as completely rewriting item 7 to better reflect the procedure for emergency removal. Judges attending a Judicial Symposium suggest that neither this form, nor JC 05b, adequately address postadjudication removal provisions in MCR 3.974(B). It is suggested that a different “order to take/place” be created for use under MCR 3.974(B)(1) and (B)(2), to be used in conjunction with JC 75.

5. JC 76, Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)

The proposed changes to this form implement amendments in 2008 PA 203 with regard to appointment of a juvenile guardian when it is in the best interests of the children to do so. The changes also incorporate the provisions in MCR 3.979 with regard to juvenile guardianships, including appointment, termination of a juvenile guardian, and revocation of a juvenile guardianship.

The Department of Human Services commented that the form requires the consent of the MIC superintendent to be filed within 28 days, while the court rule permits the court to allow for a longer time when good cause is shown. Does the form need to provide for a specific date to accommodate this situation?

6. JC 91, Order Appointing Juvenile Guardian

This is a new form required by MCR 3.979(B). The Department of Human Services points out that MCR 3.979(E)(3) should be added to the foot of the form instead of MCR 3.979(B)(4).

7. JC 92, Acceptance of Appointment (Juvenile Guardian)

This is a new form required by MCR 3.979(B)(1). The Department of Human Services suggests that item 3 should be changed to “will not delegate my authority. . .”

8. JC 93, Letters of Juvenile Guardianship

This is a new form required by MCR 3.979(B)(2). Judges attending a Judicial Symposium pointed out a typographical error in item 3.

9. JC 94, Annual Report of Juvenile Guardian on Condition of Child

This is a new form required by MCR 3.979(E)(1).

10. JC 95, Order Appointing Person to Investigate Juvenile Guardianship

This is a new form developed pursuant to MCR 3.979(D)(2). The Department of Human Services suggests that item 4 should be changed to “7 days before the hearing” to comply with MCR 3.979(F)(3).

11. JC 96, Report After Investigation of Juvenile Guardianship

This is a new form developed pursuant to MCR 3.979(D)(2) and (F)(3).

12. JC 97, Order Following Investigation and Report on Juvenile Guardianship

This is a new form developed pursuant to MCR 3.979(D)(3). Judges attending a Judicial Symposium suggested that a new item 6 be added to allow a summary modification. However, the judges point out a possibly contradiction in the court rules with regard to MCR 3.979(D)(2) and MCR 3.979(D)(4). It is questioned whether the phrase “and whether a hearing should be scheduled” in MCR 3.979(D)(2) is necessary. Technically, it is not necessary because any modification to the guardianship must be done by hearing, pursuant to MCR 3.979(D)(4). That is the intent of the rule.

13. JC 98, Petition to Terminate/Revoke Juvenile Guardianship, Notice of Hearing, and Order

This is a new form required by MCR 3.979(F).

14. JC 99, Order Following Hearing on Petition to Terminate/Revoke Juvenile Guardianship

This is a new form required by MCR 3.979(F). Judges attending a Judicial Symposium suggested a number of changes and clarifications with regard to this form.

It would be helpful that this form include prompts or instructions to help the courts in using it. Specifically, with regard to MCR 3.979(F)(2), the court can order a child removed

pursuant to MCR 3.963 when the situation warrants removal. JC 05b could be used in this instance, but there is no clear direction on this form that JC 05b should be used. The alternative is to amend this form similar to JC 75 so that the court can order removal on this particular form, making the necessary contrary to the welfare and reasonable efforts findings at the same time or to use a separate “order to take/place,” similar to the discussion on JC 75.

It should be noted that the difference between removal in a juvenile guardianship and removal under MCR 3.974 is that removal in a juvenile guardianship has to do with a new respondent, the guardian, whereas, removal under MCR 3.974 is on the petition that resulted in taking the child under the jurisdiction of the court in the first place. Therefore, removal of a child from a juvenile guardian is handled in the same manner as removal from a parent pursuant to MCR 3.963 because it is a new allegation against a new person. A petition (JC 04b) would be filed by DHS in this instance. It is possible that JC 04b would be filed at the same time the petition to revoke (JC 98) is filed depending on the circumstances, but not necessarily. It may be filed after the order revoking is entered because the order revoking may not result in a petition against the guardian or emergency removal of the child from the guardian. It may be necessary to create instructions for use of JC 05b and JC 99 and how they relate to one another in these situations.

Another question is how the court can terminate a guardianship but also name a successor guardian. In response, although statute refers to termination of guardianship, the rule does not say to terminate the guardianship. The rule was written to clarify the distinction between termination and revocation by stating that the “guardian” is terminated. This means that the guardianship continues and that a successor guardian is appointed to replace the current guardian. However, if a successor guardian is not available, the court must proceed as though a petition to revoke the guardianship was filed. It may be necessary to create instructions for the use of this form. It might be more useful to separate the order revoking guardianship from the order terminating the guardian and appointing a successor.

15. Other Forms

The Department of Human Services has requested the committee to consider developing a new form that allows the MCI superintendent to consent to a juvenile guardianship.

Attachments

cc: Steve Capps
Anne Boomer
Sally LaCross
Traci Gentilozzi
Jennifer Pettibone
Regional Offices