



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

October 6, 2014 (Amended October 10, 2014)

**MICHIGAN COURT FORMS COMMITTEE**  
**Child Protective Proceedings and Juvenile Guardianship Committee**  
Minutes of September 18, 2014 Meeting

Present: Kathleen Allen, 3rd Circuit Family Division – Juvenile  
David Bilson – 6<sup>th</sup> Circuit Court – Family Division  
Amy Dua, Dua & Associates  
Honorable Marcy Klaus, Clare/Gladwin Probate Dist 17  
Theresa Nelson, Clinton County Probate Court  
James Pettibone, Ingham County Prosecutor’s Office  
Jenifer L. Pettibone, Department of Human Services  
Honorable Thomas Slagle, Dickinson County Probate Court  
Case Anbender, State Court Administrative Office (staff)  
Colin Boes, State Court Administrative Office (staff)  
Amy Garoushi, State Court Administrative Office (staff)  
Jodi Latuszek, State Court Administrative Office (staff)

Absent: Mary Chartier-Mittendorf, Alan & Chartier PLC  
Naomi Criswell, Cass County Probate Court  
Veronica Flores, Ingham County DHS  
Angela Tripp, Michigan Poverty Law Program  
Jonie Mitts, Judicial Information Systems (staff)

Meeting called to order, 9:40 a.m.

**1. Minor Corrections**

- A. A number of forms reference MCL 712A.13a(13) as being the basis for the release of information by the Department of Human Services (“DHS”) to foster parents. However, following two recent amendments to MCL 712A.13a by 2012 PA 115 and 2012 PA 163, what was subsection 13 is now 15. Therefore, the references to MCL 712A.13a(13) will be updated to MCL 712A.13a(15) on the following forms: JC 11a (item 25); JC 11b (item 19); JC 17 (item 18); JC 19 (item 23); JC 49 (item 21); and

JC 75 (item 16). The committee was informed that these corrections will be put on file for modification when the form is changed for a substantive reason. The committee agreed this was appropriate.

Similarly, the committee was informed that the reference to MCL 712A.13a(12) on JC 15 should be modified to subsection (14). This correction will be put on file for modification when the form is changed for a substantive reason. The committee agreed this was also appropriate.

- B. On JC 17, the subparts of item 18 are not numbered. The committee was informed that the subparts will be numbered, similar to the way the same provision appears on JC 49. The committee agreed this was appropriate and the form was approved as revised.

2. **JC 05b, Order to Take Child(ren) into Protective Custody and Place (Child Protective Proceedings)**

- A. The committee considered a suggestion from Child Welfare Services that the format of findings in item 3.b. should be revisited. The committee discussed that some courts have not been properly putting the reasonable efforts findings in item 3.b.3. and the contrary to the welfare findings in item 3.b.5. This is partly due to the fact that the items used to be separate and in the opposite order (with contrary to the welfare coming first). Further, it was noted that because it is the contrary to the welfare findings that have immediate funding implications in Title IV-E cases, it was discussed whether it may be better to reverse the order of the reasonable efforts and contrary to the welfare findings. It was noted that, as it stands right now, the items are consistent with the order in both court rule, MCR 3.963(B)(1), and statute, MCL 712A.14b(1). However, several committee members noted that they would prefer that if the contrary to the welfare findings came first, both because of the historical order on the form and because if you cannot make the contrary to the welfare finding, you would not reach the reasonable efforts finding. Some on the committee did express some concern regarding the reordering because of the need to become familiar with another version within a year. However, despite this concern, the committee agreed that the change should be made and the order of the items would, at least in part, be a training issue. The committee agreed the recommended reordering was appropriate and the change should be made.

Additionally, the committee considered how the contrary to the welfare and reasonable efforts on the form can be modified to make it clear that both must be completed. The committee considered a suggestion that the words “reasonable efforts” be bolded, in what is currently item 3, and that the parenthetical “(Specify.)” be added after what is currently item 5. The committee agreed that these changes were appropriate to make the format between the two items consistent and to further highlight the need to complete the blank portion on the form in both items.

Further, because the contrary to the welfare findings usually take up more space and

cannot later be fixed if done incorrectly, the committee determined that two lines be removed from the reasonable efforts blank space and added to the contrary to the welfare blank space.

The committee also discussed the use of the form as it relates to indicating the reasonable efforts made and how the reasonable efforts section under item 3.b. interacts with item 4, relating to when reasonable efforts are not necessary. The committee concluded that the form, as it is currently structured, works as intended and should not be changed at this time.

- B. The committee also considered whether JC 05b should be further modified so that there is a way to indicate the order is an interim order when a referee signs it. The committee considered that MCR 3.963 indicates that if a referee finds the factors in MCR 3.963(B)(1) are met, the referee may issue an “interim placement order pending the preliminary hearing.” MCL 712A.14a, dealing with immediate removal of a child, indicates that a referee or judge shall be designated as contact when placement is sought for immediate removal. The statute also provides that, “[w]hen a placement order is issued by a designated referee, the order shall take effect as an interim order pending a preliminary hearing.” The form has a use note that already indicates that the referee may issue an interim placement order pending the preliminary hearing, but does not have a checkbox to indicate that the order is interim. The committee discussed this issue, but determined no checkbox was needed. The committee concluded it is clear enough from the use note that the referee’s order is an interim placement order. The committee concluded no change was necessary with respect to this suggestion.

The form was approved as revised.

### 3. **JC 11b, Order After Pretrial Hearing (Child Protective Proceedings)**

The committee next discussed a suggestion that it may be appropriate on this form, as part of item 22, to include a checkbox to indicate that placement shall continue until “disposition.” It was noted that there is a similar checkbox on JC 11a. However, in 2006 the option for “disposition” was removed from JC 11b, as the committee at that time determined it was not appropriate. The committee discussed whether there would be circumstances where the placement might be appropriate until disposition (such as if a plea is taken) such that this option should be included on JC 11b, but concluded that generally that would not be the case. The committee discussed how item 22 is used and how it interacts with funding issues and other issues relating to what the next hearing might be. Ultimately, the committee decided no additional checkbox options need to be added to the form at this time.

No change was made to this form.

4. **JC 19, Order Following Dispositional Review/Permanency Planning Hearing (Child Protective Proceedings)**  
**JC 76, Order After Post-Termination Review/Permanency Planning Hearing (Child Protective Proceedings)**

The committee next considered a suggestion that both JC 19 and JC 76 be modified to clarify the process relating to the permanency planning goal. See MCL 712A.19a (permanency planning pre-termination); MCL 712A.19c (permanency planning post-termination); see also MCR 3.976 (permanency planning hearings). The committee discussed how the form was currently used and some of the confusion relating to whether the information to be provided should relate to the past efforts relating to permanency planning or to future efforts.

The committee considered whether JC 76, item 10, should be modified to clarify what should be completed on the form. The committee discussed that some courts find items 9 and 10 confusing in that item 9 relates to the efforts that have already been made, but some courts confuse that with the future permanency planning goal, which may or may not have changed. To help clarify this, the committee considered a suggestion that item 10 be modified to read, “The permanency planning goal listed above  is appropriate  is not appropriate and should be:” The proposed item would also now be followed with a blank space for stating the new permanency planning goal if the one listed in item 9 is determined to no longer be appropriate. This would clarify that item 9 relates to the current permanency planning goal and what has been done in the past, while item 10 would be used to modify the permanency planning goal, if necessary, or to indicate it remains appropriate moving forward. The committee noted that they believed this would prove helpful with respect to completing the orders, and several members on the committee indicated this would provide further clarity with respect to the use of the form. However, after discussing the proposed language, the committee ultimately settled on language for item 10 that, “The permanency planning goal in item 9  is appropriate  is no longer appropriate and shall be:” This will be followed by a blank space for indicating the new permanency planning goal.

In light of this conversation, the committee also discussed how it is that the court “approves” the permanency plan in that the orders generally do not make a specific reference to approving the permanency plan. The committee discussed this issue but determined it was not necessary for the order itself to indicate this, as the courts may make the finding on the record. At this time, it was determined no change was needed in this regard.

The committee also agreed a similar change should be made on JC 19 in that a new item 18 would be added after current item 17 that tracks the language of the modified item 10 noted above. The only differences would be the item numbers referenced and that there would be a checkbox in front of the new item 18. This would be used in the same general fashion, allowing item 17 to list the current permanency plan and efforts that have been made, and the new item 18 would allow the court to indicate whether the permanency planning goal remains appropriate and, if not, what should be changed.

The committee also discussed whether there would be an interest in developing a form for use for expedited permanency planning hearings. SCAO staff indicated they would look into creating a draft form and, if it is determined to be appropriate, possibly presenting it at next year's committee meeting for consideration. The committee expressed an interest in the development of such a form, but determined it would wait until reviewing a draft version of the form before making any final decisions.

The committee also briefly considered whether JC 19 should be split back into two separate forms, with one used for dispositional reviews and another for permanency planning. The committee discussed the reasons that the forms were combined, including that there are times where both dispositional and permanency planning elements would be considered at the same hearing. Following this discussion, the committee decided the courts were generally not having trouble with this combined form and no change in this respect should be made at this time.

The forms were approved as revised.

#### 5. **JC 23, Waiver of Summons/Notice of Hearing**

The committee considered a suggestion that this form be modified to also inform the individual that there is no right to a jury at a termination hearing. Some on the committee believed that 5.e. on the form already sufficiently covers this issue, in that it explains when there is a right to a jury. However, others noted that many individuals may not understand the distinction between a trial and a termination hearing and could still believe they would have a right to a jury. The committee considered that MCR 3.920(B)(3) indicates that the summons should explain that there is no right to a jury at a termination proceeding. Given that this form is used to waive the right to a summons, the committee determined a use note should be added, tracking the language of MCR 3.920(B)(3)(b), that indicates, "Note: There is not a right to a jury at a termination proceeding."

Additionally, the committee was informed that citation at the bottom of the form needs to be updated. MCR 3.920(E) should be changed to MCR 3.920(F). Subpart (F) of the rule deals with waiver of notice and service. Subpart (E) deals with subpoenas. The committee agreed this was appropriate.

The form was approved as revised.

**Staff note:** During typesetting it was determined that the proposed note may be better positioned as part of item e. instead of as a standalone note. The same language as that proposed will be added to the end of the first sentence of item e. as follows, "I have the right to a jury at trial only, there is no right to a jury at a termination hearing."

## 6. JC 84, Claims of Appeal and Order Appointing Counsel

The committee considered a comment from staff of the Michigan Court of Appeals that a portion of the “Note to Court” is misleading and should be removed. Specifically, sentence three of the first paragraph indicates what the court should do when the request for counsel is denied and provides: “If the respondent is financially able to provide an attorney, check item 4b; the claim of appeal must still be filed with the Court of Appeals because the request was timely.” This language on the form has resulted in some courts submitting the claim on behalf of individuals after the request for counsel has been denied. The committee discussed the fact that it appears that the court rules contemplate the respondent filing his or her own claim of appeal where the appointment of counsel is denied. Some on the committee noted that this made it difficult for the respondent whose request is denied to file an appeal within the appropriate appellate time parameters and argued that it might be appropriate to allow this process to continue.

The committee discussed the reason this change was made in 2005. It was noted that, at the time, the change was intended to have the court file the form with the Court of Appeals. It was intended that the form could be used under MCR 3.977(J)(2)(b) when the request was timely and an attorney appointed and under MCR 7.204 when the request was timely but an attorney was not appointed. The logic at that time was that a parent has a right to appeal pursuant to MCR 7.204(A)(1)(c). However, some on the committee noted this is problematic because a person denied appointment of counsel may choose not to file a claim of appeal with the Court of Appeals. Further, it was noted that the appellate rules generally indicate a party should file the claim of appeal. Under MCR 3.977(J)(2)(b), only where the order has appointed an attorney does the court forward the material to the Court of Appeals and it constitutes a timely claim of appeal under MCR 7.204. Outside of that process, it was discussed that the rule appears to require that the appellant or their retained attorney (if one) would need to file with the Court of Appeals a claim of appeal, pursuant to MCR 7.204(B).

The committee recognized the utility of the trial court filing the claim of appeal on behalf of an individual who was denied counsel but, ultimately, the committee agreed that the form should not direct the court to forward the form to the Michigan Court of Appeals on behalf of a respondent whose request for an attorney was denied because the court rules do not allow for it. Therefore, the committee agreed to remove the language in the “NOTE TO COURT” section at the bottom of the form indicating that, “the claim of appeal must still be filled with the Court of Appeals if the request was timely.”

However, in order to provide some guidance on the form, the committee decided a new note should be added. A parenthetical will be added after item 4.b. that says “(See note).” At the bottom of the form, a new note will be added indicating: Note to respondent: If you want to file a claim of appeal with the Court of Appeals, you must file it within 14 days of the date this order is signed.” This note will inform the respondent that he or she has 14 days, so long as the request for an appointed attorney was timely filed, from the date the order denying the request for counsel is signed to file an appeal by right. MCR 7.204(A).

The form was approved as revised.

**Staff note:** During typesetting, it was determined that the note should be clarified to make it clear the note is only applicable to a respondent who is denied appointment of counsel. To this end, the note will now read, “If your request for appointment of counsel is denied and you want to file an appeal with the Court of Appeals, you must do so within 14 days of the date this order is signed.”

7. **Should a New Form Be Created to Commit a Minor to the Agency When a Parent Dies During the Course of Child Protective Proceeding?**

The committee considered whether a new form should be created for use where a parent dies during the course of a child protective proceeding. The committee considered a draft form that would be used where the child is committed to the agency after a parent or parents die during the course of a child protective proceeding. Some on the committee noted they use other forms that can be used in this circumstance, with modifications made as necessary to meet the circumstances of the case. Committee members also noted that it is not always desirable to create a new form for every possible outcome, no matter how remote. Instead, some on the committee noted it was preferable to mold existing forms for use in those limited circumstances where a parent dies during the course of a child protective proceeding. The committee also discussed that, in some instances, it is beneficial not to have a statewide form because it allows more flexibility in local practice. The committee concluded no new form should be developed at this time.

No new form was created.

8. **Consideration of a New Form for Use for Removals under MCR 3.974(A)**

The committee discussed an issue that was briefly considered at last year’s forms meeting, which was a suggestion that a new form should be created for use where the child is removed after a hearing conducted under MCR 3.974(A). However, it was noted that after further review, the practice was not one that we wanted to encourage by creating a form and that there were some questions regarding the process. Moreover, there are currently changes being considered with respect to this rule and it was noted a form should not be created right now when it may need changes or deletion in short order if a rule change is made. The committee agreed that we should wait to see what, if anything, changes in the court rule and, after any rule changes, consider whether there is still a need for a new form. The committee also discussed the possibility that, following rule changes, a new form may not even be needed and the current forms may suffice.

No new form was created.

Meeting adjourned at 11:45 a.m.

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Respectfully submitted,

Colin F. Boes