



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

October 14, 2015

MICHIGAN COURT FORMS COMMITTEE
Child Protective Proceedings and Juvenile Guardianship Work Group
Minutes of September 17, 2015 Meeting

Present: Kathleen Allen, 3rd Circuit Court
Zoe Lyons, Michigan Department of Health & Human Services
James Pettibone, Ingham County Prosecuting Attorney
Christine Piatkowski, PLC
Hon. Thomas Slagle, Dickinson County Probate Court (via telephone)
Casey Anbender, State Court Administrative Office (staff)
Jodi Latuszek, State Court Administrative Office (staff)
Amy Garoushi, State Court Administrative Office (staff)
Matthew Walker, State Court Administrative Office (staff)

Absent: Hon. Marcy Klaus, Clare County Probate Court
Theresa Nelson, Clinton County Probate Court
Angela Tripp, Michigan Poverty Law Program
Jenifer Pettibone, Michigan Department of Health and Human Services
Lauren Mayotte, Michigan Department of Health and Human Services
Melissa Brand-Orweller, Judicial Information Systems

Meeting called to order, 9:50 a.m.

1. Minor Corrections

The committee was advised that number of minor corrections required attention. Because of recent statutory amendments, references to MCL 712a.13a(13) were placed with MCL 712a.13a(15) on

forms JC 11a (item 25), JC 11b (item 19), JC 17 (item 18), JC 49 (item 21), and JC 75 (item 16).

Similarly, the reference to MCL 712a.13a(12) was replaced with MCL 712a.13a(14) on form JC 15.

On JC 05b, page 2, after *Recommended by*, the reference to MCL 712a.14[a][3] was replaced with MCL 712a.14a(13).

On PC51a Special Instructions for Name Change, the P.O. Box listed for the Michigan State Police was updated to P.O. Box 30266.

The committee adopted the changes as recommended.

STAFF NOTE: Other minor changes were made to the forms during typesetting for purposes of consistency in style and to incorporate various standards. These changes include replacing “pursuant to” with “under” or “in accordance with,” modifying numbering style, and replacing the term “Department of Human Services” with “department,” and applying a reference note indicating that “department” refers to the Department of Health and Human Services. Affected forms include JC 05b, JC 11a, JC 11b, JC 17, JC 19, JC 49, JC 63, JC 75, JC 76, JC 97, JC 98, JC 99, JC 100, and JC 101.

STAFF NOTE for JC 05b: Reference to MCR 3.974(B)(1) was updated to MCR 3.974(C)(1) in item 3b and at the foot of the form.

STAFF NOTE for JC 17: The minor correction to JC 17 listed in the agenda was corrected in 2014. During typesetting, JC 17 was updated to include a new item 6 for Indian child removal hearings. It states, “This hearing is being conducted under MCR 3.974(D)(2) for an Indian child who was removed from the home. The Indian child removal hearing [] was held with this hearing. [] was previously held. [] is scheduled for _____.” In addition, for purposes of clarity, the note at the bottom of page one was updated to state, “If it comes to the court’s attention or new allegations are made during this hearing that require the removal of the child(ren), removal must be done in accordance with MCR 3.974.”

STAFF NOTE for JC 63: The words “there is” and “there is not” in items 8a and 8b respectively were bolded to bring attention to the difference between the options.

STAFF NOTE for JC 65: The word “that” was removed after “IT IS ORDERED:”

2. JC 11b, Order After Pretrial

The committee discussed a suggestion to add a checkbox to dismiss the petition. Members considered whether or not adding this checkbox would lead to courts dismissing petitions without a motion. To avoid this, the committee decided to add a new line to allow courts to find that a motion for dismissal was filed. A new option 18 was added as follows, “[] 18. A motion has been made to dismiss the petition,” and an item 21 option was added as follows, “[] 21. The petition is dismissed.” In addition to the checkbox for dismissal of the petition, the committee discussed adding a checkbox for dismissal of a termination request. The committee decided that adding a checkbox for dismissal of a termination request was unneeded and could be added in the parenthetical statement for item #23 “Other”. The parenthetical was changed to include “amendments/corrections, termination withdrawals, stipulations, etc.” Finally, the items were renumbered to correct for the added boxes.

The form was approved as revised.

STAFF NOTE for JC 11b: During typesetting, SCAO staff recognized that the order portion of the form began at item 19 and the option for dismissal was moved to that line. In addition, committee members suggested that the language in JC 75 allowing an emergency removal be clarified to state “has not/have not been removed” instead of “has/have not been removed”. The committee agreed that the “has/have not” language lends to confusion about the meaning of the sentence. This language is also present on JC 11b in item 9 and SCAO staff made this change on JC 11b as well. Finally, elements (a)-(c) of item 9 were broken into separate lines to increase readability.

3. JC 11a, Order After Preliminary Hearing

The committee discussed a suggestion to add an option in item 14 to make a finding that a child is not Indian. The committee decided that an affirmative finding that a child is not Indian could cause procedural issues and the suggestion was not adopted.

The form was not changed.

4. JC 19, Order Following Dispositional Review/Permanency Planning Hearing

The committee discussed a suggestion to add lines indicating whether progress was made for each parent. The commenter suggested that because of the *Sanders*¹ decision, indications as to both parents’ progress should be made. The committee discussed the logistical difficulties of making

¹ *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014).

progress findings for each parent. It was noted that in some cases, multiple fathers make this addition difficult to manage. The committee discussed the merits of trying to use checkboxes or a write-in space to adopt the suggestion. The committee felt that neither of the solutions was viable. As to checkboxes, the form could not be expanded to handle multiple parents without making the form unwieldy. As to the write-in space, the committee felt that another write-in field would make this form more cumbersome than it already is. The added space could also lend itself to being used incorrectly, potentially causing more frustration than is needed.

Ultimately, the committee concluded that the progress of each parent is already indicated in other, separate portions of the form. Therefore, the suggested change was not needed and the form complies with the statute as is.

The form was not changed.

5. JC 11a, Order after Preliminary Hearing
JC 17, Order of Disposition
JC 49, Order of Adjudication

The committee discussed a suggestion to update language concerning the custody of the child(ren). The current language on the forms states that “Conditions of custody at the placement after from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)’s health and welfare.”

The language of MCR 3.965(C)(2) states that “[t]he court may order placement of the child into foster care if the court finds all of the following: . . . (e) Conditions of child custody away from the parent are adequate to safeguard the child’s health and welfare.”

In comparing the form with the court rule, the committee noted a key distinction: the current wording allows for placement “outside the home,” which includes placement settings other than foster care. Based on this, the committee did not adopt the suggestion.

The forms were not changed.

STAFF NOTE for JC 11a: While reviewing this agenda item and the meeting minutes, it was discovered that the context for this agenda item was two-fold and part of it was not presented or discussed by the committee. The language in item 20 of JC 11a is related to language in item 13 of the checklist portion of the form. According to the person who raised the concern, the language in

both items should be consistent. SCAO agrees and recommends that the last bullet in item 13 be changed from “conditions of child custody away from the parent are adequate to safeguard the child’s health and welfare” to “conditions of child custody away from the home and with the individual with whom the child is placed are adequate to safeguard the child’s health and welfare.”

**6. JC 19, Order Following Dispositional Review/Permanency Planning Hearing
JC76, Order after Post-Termination Review/Permanency Planning Hearing**

The committee was provided with an amended federal statute regarding APPLA, which limits its application to children 16 or older along with a proposed change in DHHS policy that would eliminate the distinction between APPLA and APPLA-E. The committee considered a suggestion to remove references to APPLA-E in anticipation of the DHHS policy change, and a suggestion to clarify that APPLA applies to children 16 or older as now limited by 42 USC 675(5)(c)(i).

The committee agreed with both suggestions and change item 17 of JC 19 and item 9 of JC 76 as follows: “Reasonable efforts

have have not been made to finalize the court-approved permanency plan of
 e. placement in another planned permanent living arrangement (APPLA) for the child(ren) age 16 or older named ... ”

The forms were approved as revised.

STAFF NOTE for JC 19: During typesetting, JC 19 was updated to include a new item 6 for Indian child removal hearings. It states “This hearing is being conducted under MCR 3.974(D)(2) for an Indian child who was removed from the home. The Indian child removal hearing was held with this hearing. was previously held. is scheduled for _____.” In addition, the note at the bottom of page one was updated to state “If it comes to the court’s attention or new allegations are made during this hearing that require the removal of the child(ren), removal must be done in accordance with MCR 3.974.”

**7. JC 75, Order Following Emergency Removal Hearing
JC 11a, Order After Preliminary Hearing**

The committee discussed the need for changes to this form in light of amendments to MCR 3.963, 3.966, and 3.974, effective September 1, 2015. The amendments clarify the procedure for taking a child into protective custody at varying stages in child protective proceedings.

The committee changed the reference in item 8b from MCR 3.974(B)(1) to MCR 3.974(C)(1), and then shifted to the procedural aspects of which order is appropriate in a given situation.

The committee discussed at length how JC 05b, JC 11a, and JC 75 are used for both ordering a child be taken into protective custody as well as ordering placements out of the home. The confusion lies in that, while JC 05b is clearly an order that would be used to order protective custody, JC 11a, JC 11b, and JC 75 also contain language that allows the court to order a child be taken into protective custody. This dual purpose causes confusion about when to use JC 05b. Also, there is confusion as to when the 24-hour preliminary hearing under MCR 3.965 should be held as opposed to the 24-hour emergency removal hearing under 3.974.

The court rule amendment now makes clear that a 24-hour preliminary hearing is only held once, after a child has been removed without a court hearing (by police or DHHS). After a petition is authorized, any subsequent removal of a child from the home that is done without a hearing pursuant to MCR 3.963 would be followed up with a 24-hour emergency removal hearing under MCR 3.974(C). The following use note was added to JC 11a: “Do not use this form for emergency removals that are ordered after the petition has been authorized. Use JC 75 instead.”

In addition to clarifying the distinction between the 24-hour preliminary hearing following removal under MCR 3.963 and the 24-hour emergency removal hearing following a removal under MCR 3.963, the committee discussed other situations where JC 75 would be used. For example, under MCR 3.974(A)(3) and (B), a petition may be filed seeking removal of the child any time after the petition has been authorized. In this situation, the court would conduct a removal hearing pursuant to MCR 3.974(B)(1) or (2) and complete form JC 75, including the section ordering that the child be taken into protective custody. To make clear when the form is being used under MCR 3.974(B)(1) or (2), the committee concluded that checkboxes should be added in the title to indicate that the hearing was preadjudication or postadjudication.

SCAO staff indicated that detailed instructions for use of the various order forms (including JC 75), had been produced by SCAO several years ago and recommended they be updated to further alleviate confusion about use of the forms as it pertains to removal and the appropriate procedure to follow. Members agreed that this would be very helpful and SCAO staff agreed to try to have the instructions updated and distributed with the forms in December.

Members also suggested that the language allowing an emergency removal (see JC 75, item 8b) be clarified to state “has not/have not been removed” instead of “has/have not been removed”.

The committee agreed that the “has/have not” language lends to confusion about the meaning of the sentence.

The forms were approved as revised.

STAFF NOTE for JC 11a: For purposes of clarity and simplicity, the language of the use note for JC 11a was modified slightly during typesetting to state: “Do not use this form for removals if a petition has already been authorized in this case. Use JC 75 instead.” In addition, committee members suggested that the language in JC 75 allowing an emergency removal be clarified to state “has not/have not been removed” instead of “has/have not been removed.” The committee agreed that the “has/have not” language lends to confusion about the meaning of the sentence. This language is also present on JC 11a in item 13 and SCAO staff made this change on JC 11a as well. Finally, elements (a)-(c) of item 13 were broken into separate lines to increase readability.

STAFF NOTE for JC 75: During typesetting, SCAO staff clarified JC 75 further. Item 8a and 8b were split and combined with item 3 to create items 3a and 3b. Item 9 was also combined with item 3a because the written statement of reasons for removal and advice of rights is a specific requirement for emergency removals under MCR 3.974(C).

Item 3a states, “[] This emergency removal hearing is held [] preadjudication [] postadjudication under MCR 3.974(C). Protective custody of the child(ren) was already ordered on _____ (form JC 05b or other). Taking the child(ren) into protective custody was necessary to protect the health, safety or welfare of the child(ren), and it [] is [] is not necessary that removal continue pending the next hearing (see item 16). [] Each parent, guardian, or legal custodian from whom the child(ren) was removed has received a written statement of the reasons for the emergency removal and has been advised of his/her rights in accordance with MCR 3.974(C)(3). [] Contrary to welfare findings were made in the order authorizing the emergency removal (form JC05b or other)”.

Item 3b states, “[] This removal hearing is held [] preadjudication [] postadjudication under MCR 3.974(B). The child(ren) has not/have not been removed prior to this hearing and an order to take the child(ren) into protective custody [] is not necessary [] is necessary. Under MCL 712A.2(b) and MCR 3.965(C) there is reasonable cause to believe: 1) the child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm and the child(ren)’s immediate removal from those surroundings is necessary to protect the child(ren)’s health and safety, 2) the circumstances warrant issuing this order, 3) consistent with the circumstance, reasonable efforts were made to prevent or eliminate the need for removal of the child(ren) as stated in item 7, 4) no remedy other than protective custody is reasonably available to protect the child(ren), and 5) continuing to

reside in the home is contrary to the child(ren)'s welfare because: (Attach separate sheets as necessary.)". A use note was added to the bottom left corner of page 1 stating, "Use JC 75 when all of these circumstances exist: (1) a supplemental or amended petition has been filed for removal from a parent's home, (2) a preliminary hearing has already been held, and (3) a petition was already authorized)".

Item 7 (now item 6) was corrected to reflect the appropriate hearing type for an Indian child removal hearing. Item 19 (now item 16) was modified for compliance with MCR 3.974 to state, "This matter is set for an adjudication (within 63 days of removal under MCR 3.972[A]) a dispositional hearing (within 28 days of removal under MCR 3.974[D][1]) a dispositional review hearing (within 14 days of removal under MCR 3.974[D][2]) before _____ (name) on _____ (date and time)".

Item 20 (now item 19) was modified to clarify its reference to an Indian child removal hearing and states "This matter is set for an Indian child removal hearing on _____ (date and time) under MCR 3.967. The petitioner shall give notice of these proceedings as required by MCR 3.920(C)(2) (use form JC 48)." Finally, all of the items and internal references were updated to account for the combined items.

8. JC 49, Order of Adjudication

The committee discussed a suggestion to modify JC 49 to include a new ground in the list of jurisdictional grounds (item 10). The new ground was added to MCL 712a.2, effective January 14, 2015, and states the following:

(3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be dependent when any of the following occurs:

(A) The juvenile is homeless or not domiciled with a parent or other legally responsible person.

(B) The juvenile has repeatedly run away from home and is beyond the control of a parent or other legally responsible person.

(C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code, 1931 PA 328, MCL 750.462a or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.

(D) The juvenile's custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile.

The committee concluded that these grounds were different in nature from other child protective grounds and should not be included on JC 49. In reviewing the statute, the committee felt the new statutory grounds pertain to the juvenile rather than respondent adults. This led the committee to discuss the procedural aspects of the new statutory grounds, whether or not the parents would be adjudicated, and whether or not the court could take jurisdiction over the child without adjudication. Ultimately, the committee decided to table the item so that the procedural issues associated with the new grounds could be researched. The committee recommended that the item be referred for a court rule change and a new type of case code.

The form was not changed.

9. Additional Agenda Item

Although not published for comment, SCAO staff asked the committee to discuss a suggestion to add a date line next to the referee's signature line to allow the referee to date his or her recommendation on all orders. This issue was brought up after the deadline for submission for the meeting and after the public comment period for the agenda. Due to the potentially serious nature of the issue, it was added to the agenda for discussion.

The suggestion was as a result of Title IV-E audits whereby federal auditors expressed confusion as to when the determination to remove was actually made. The form contains a date for the hearing and a date for the judge's signature but neither adequately addresses when a referee has made the requisite findings for removal. It is not clear that the date of hearing is the date that the referee made the findings and the date the judge signs the order does not validate when the referee made the findings. To alleviate this lack of clarity, SCAO staff suggested that a date line be added after the recommending referee's signature line. The committee discussed the issue, the potential unanticipated consequences, and the reasoning behind adding the date line.

Although the committee agreed the issue was a matter of training, it agreed the additional field was an appropriate solution, coupled with more training.

The committee also discussed the requirements of MCR 3.991(B)(3) regarding the review of a referee's decision within 7 days of the written recommendation. Ultimately, the committee found that the additional field would assist with court rule compliance and review of the referee's recommendation.

The following forms will be revised accordingly and provided to the committee for final review before they are presented to the state court administrator for approval: JC 05b, JC10, JC11a, JC11b, JC14a, JC14b, JC17, JC17a, JC19, JC25, JC47, JC49, JC57, JC59, JC63, JC65, JC75, JC76, JC89, JC91, JC95, JC97, JC98, JC99, JC100, JC101.

STAFF NOTE: The following forms were not revised to include the date for the referee's recommendation as they pertain to delinquency proceedings. The following forms will be referred to the delinquency committee on this issue: JC 10, JC 14a, JC 14b, JC 25, JC 57, JC 59, JC 89.

Meeting adjourned, 2:30 p.m.

Respectfully submitted,

Matthew L. Walker