

MICHIGAN SUPREME COURT



Office of Public Information

contact: Marcia McBrien | (313) 972-3219 or (517) 373-0129

FOR IMMEDIATE RELEASE

COURTS MUST ASK LAWYERS IF THEY'VE MET WITH CHILD-CLIENTS UNDER NEW COURT RULE

LANSING, MI, March 10, 2004 – Lawyers who represent children in abuse and neglect cases will be asked by judges whether they've met with their child-clients before each hearing, under a new court rule now in effect.

The new rule, aimed at fully implementing a 1999 state law, was recommended by an adoption work group convened by Chief Justice Maura D. Corrigan. In a September 2003 report, the work group, which included judges, attorneys, and Family Independence Agency officials, found that lawyer guardians ad litem (LGALs) often failed to meet with their child-clients. LGALs also frequently substituted for one another at court hearings, the work group found. As a result, LGALs represented children at court hearings without being informed of the children's needs or desires, the work group stated.

Michigan Court Rule (MCR) 3.915 states that, in child protective proceedings, "[t]he court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d."

The new version of the rule adds, "At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so."

Another addition to the rule provides that the court may permit another attorney to substitute for the LGAL assigned to a child's case, "if that would prevent the hearing from being adjourned, or for other good cause." However, the substitute lawyer "must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule."

"The work group found that many LGALs are not complying with the 1999 statute that requires LGALs to meet with their clients before each hearing. These rule changes are aimed at

making sure that LGALs really communicate with their clients and are familiar with the circumstances of the case,” said Kathryn A. O’Grady, Director of Child Welfare Services for the State Court Administrative Office, the administrative arm of the Michigan Supreme Court.

A revision to MCR 3.965 implements another work group recommendation by requiring courts to ask the child’s “parent, guardian, or legal custodian” about relatives who might care for the child while the case proceeds. The judge must also direct the child protective agency in this case to “identify, locate and consult with relatives to determine if placement with a relative would be in the child’s best interests.” The new rule further provides that, “[i]f the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.”

Other changes include:

- Changing the time for filing petitions for termination of parental rights to less than 42 days (MCR 3.976). The earlier version of the rule permits such petitions to be filed up to 42 days after a court determines, at a permanency planning hearing, that a child should not be returned home. The work group noted that “In some cases, FIA may need a significant amount of time to prepare the petition. But that is not always the case, particularly where it has already formulated the recommendation to terminate.”
- Requiring courts to notify interested parties, such as parents, relatives, and caregivers, of their ability to participate in hearings regarding where children will live (MCR 3.975).
- Encouraging earlier scheduling of permanency planning hearings and earlier filing of petitions for termination of parental rights (MCR 3.976).
- Requiring the court to notify interested parties that they may participate in permanency planning hearings (MCR 3.976).
- Giving child welfare cases “the highest possible priority” for scheduling, so that cases are not delayed (MCR 3.977).

The full text of the court rules is available on the “One Court of Justice” website at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/2003-50.pdf>.

The adoption work group report may be viewed at <http://www.courts.michigan.gov/supremecourt/Press/FinalReport.pdf>.

-- MSC --