



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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September 6, 2018

TO: Michigan Court Forms Committee, Child Protective Proceedings Workgroup

FROM: Matthew L. Walker, Forms and Resources Analyst

RE: Agenda and Materials for **September 20, 2018 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa St., Lansing, MI 48915

Below is the agenda for the September 20, 2018 meeting of the Michigan Court Forms Committee, Child Protective Proceedings Workgroup. The meeting will be held in room 1S-69 at 9:30 a.m. Please note that our office is located at 925 W. Ottawa St., Lansing, MI 48915.

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

1. **MC 70, Request for Reasonable Accommodations and Response**
MC 70a, Review of Request for Reasonable Accommodations and Response

Modifications have been suggested to clarify that these are the forms to be used to request a sign language interpreter. The suggested modification is the addition of a use note to both forms to clarify that individuals needing a foreign language interpreter, except sign language, should utilize form MC 81.

It was also suggested that the forms should be corrected by moving the parenthetical language in subparagraph 3 to the end of subparagraph 4 because the parenthetical language defines the accommodation being requested, not the impairment.

In addition, it was suggested that the header language for the response section on MC 70a be revised to read “Response to Request for Review” to more accurately reflect the form’s purpose.

Drafts provided.

2. MC 81, Request and Order for Interpreter
MC 81a, Review of Request for Interpreter and Order

Modifications have been suggested to insert the words “Foreign Language” before “Interpreter” in the title and section headers of each form to clarify that the form is only for foreign language interpreters. In addition, it was suggested to add a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

It was also suggested that language should be added to paragraph 1 to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1).

Drafts provided.

3. Hearing Location and Jurist

It has been suggested that the notice of hearing section on court orders include a writing space for the jurist (judge or referee) and the location, including courtroom. The suggestor states that many parties in their court report to the judge’s courtroom for a hearing, but are scheduled before a referee.

This suggestion would impact a number of forms including: JC 11a, JC 11b, JC 17, JC 17a, JC 19, JC 49, JC 63, JC 75, and JC 76.

Should this suggestion be adopted? If the court includes a notice of hearing in an order, is another notice of hearing (form JC 45) generated?

Public Comments:

- Including the additional information such as the courtroom and who the hearing is scheduled in front on an order would be beneficial. However, any information on the JC 45 that isn’t included on an order, including the advice of legal rights, should also be included on the order if the JC 45 is not also used. Due to the fact that a JC 45 Notice of Hearing is clear and easily understandable by the general public, I think this form should still be used, especially where a party is not provided the order in person and given the

additional oral notification on the record. Overall, I think including the information on an order is beneficial but that the JC 45 should still be used.

Sandra L. Reizen, Esq.
Children's Services Legal Division
Michigan Department of Health & Human Services

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

- A. It has been suggested that the title of the form include an indication whether the petition is amended.

Should this suggestion be adopted?

- B. It has been suggested that one of the writing spaces for mother (item 2g or 2h) be removed from this form. There are two writing spaces for mother on the form to accommodate same-sex couples. However, the suggestor states that the additional mother space makes the form confusing because petitions are typically filed as one petition per mother.

Should the suggestion be adopted? Is there another option that would clarify the form?

Draft provided.

Public Comments:

- I don't think item 2g or 2h should be removed. Even if there are separate petitions for each mother, I think it is important to keep the information on each mother's petition that there is another mother. The item could clarify that there is another petition and also provide that petition number in the item.

Sandra L. Reizen, Esq.
Children's Services Legal Division
Michigan Department of Health & Human Services

- I agree there should be a checkbox to state if the Petition is Amended. It would be better than having "Amended" scribbled on the top of the Petition.

Tuscola OnBase

5. JC 05b, Order to Take Child(ren) into Protective Custody and Place
JC 11a, Order after Preliminary Hearing
JC 11b, Order after Pretrial Hearing
JC 17, Order of Disposition
JC 49, Order of Adjudication
JC 75, Order after Removal Hearing

This agenda item pertains to the aggravated circumstances/exceptions to reasonable efforts to preserve and reunify sections on these forms. The items in question are:

- Item 4 of JC 05b
- Item 17 of JC 11a
- Item 13 of JC 11b
- Item 12 of JC 17
- Item 14 of JC 49
- Item 8 of JC 75

It has been suggested that these items be modified to comply with MCL 712A.19a(2)(c) as amended by 2018 PA 58.

Alternatively, it has been suggested that these items be redesigned into a writing space instead of checkboxes for why reasonable efforts are not required to prevent/eliminate removal and not required to preserve and reunify the family. The suggestor states that these items are not used often. A writing space would conserve space and make the form appear less confusing.

Questions regarding these suggestions are below.

- (1) How frequently are these items used on these forms?
- (2) Which suggestion should be adopted? Would these forms be more difficult to complete if a writing space were adopted?
- (3) What is the writing space “still recommended because” used for in part b of the items? Is it necessary to retain this?

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

- A. A probate/family division judge has suggested modifying this form into a combined petition and order for protective custody to streamline the process for caseworkers and judges.

Under MCR 3.963(B)(1), a caseworker must submit a petition or affidavit of facts to the court before an order to take children into protective custody can be issued. The suggestor states that it is highly unlikely that a caseworker would submit an affidavit of facts because an affidavit must be given under oath¹. Instead, many caseworkers submit an incomplete JC 04b, Petition form. Then, the caseworker files an amended petition after more information is obtained.

The suggestor states that creating a specific petition for protective custody would allow caseworkers to provide the information necessary for the court to issue an order to take children into protective custody. In addition, the combined form would allow the court to rely on the caseworker's statements when completing the order². This would be particularly beneficial in after-hours situations.

Questions regarding this suggestion are listed below.

- (1) Is the petition listed in MCR 3.963(B)(1) the same petition that must be filed to initiate a case under MCR 3.961? Compare MCR 3.963(C)(5), which requires an officer or other person to ensure the petition is prepared and submitted to the court after a child is taken into protective custody, with MCR 3.963(B)(1). See also MCR 3.903(A)(20), MCR 3.961, MCL 712A.14a, and MCL 712a.14b.

What if a case is already open? See MCR 3.974(C)(1).

¹ To constitute a valid affidavit, a document must be (1) a written or printed declaration or statement of facts, (2) made voluntarily, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 711; 620 NW2d 319, 323 (2000). An oath or affidavit other than an oath taken by a witness or a juror in a trial, or an oath required by law to be taken before a particular officer, may be taken before a justice, judge, or clerk of a court, or before a notary public. MCL 600.1440(1).

²In November, 2017, MDHHS issued a memo indicating that caseworkers are no longer allowed to pre-fill any sections or areas of a court order pertaining to contrary to welfare and reasonable efforts findings. See attached memorandum. In some courts, this change has caused processing issues with after-hours requests for orders to take children into protective custody. Specifically, judges and referees who issue orders electronically via tablets and cell phones have struggled because it is difficult to type on these electronic devices.

- (2) Would the proposed form streamline the process for caseworkers and courts?
- (3) The current version of JC 05b requires the court to *explicitly write* findings regarding why it is contrary to the child's welfare to remain in the home and what reasonable efforts have been made. However, MCR 3.963(B)(1)(a)-(e) does not appear to require this. MCL 712.14b(2) states that the ex parte order shall be supported by written findings of fact.

If the caseworker's petition is combined with the order, is it necessary for the court to write why it is contrary to the child's welfare to remain in the home and what reasonable efforts have been made?

Consider the Office of the Administration for Children and Families' Child Welfare Policy Manual, Section 8.3A.7, question 1, regarding documentation of judicial determinations, available at:

https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=24

- (4) Should this suggestion be adopted?

Draft provided.

- B. It has been suggested that item 6a of this form be modified to state, "placed with/returned to the Michigan Department of Health and Human Services for care and supervision. Immediately contact Centralized Intake at (855) 444-3911 upon apprehension."

The suggestor states that the added language would clarify the procedure for law enforcement operators and LEIN operators when a child is absent without leave from a foster care placement and subsequently taken into protective custody.

Should this suggestion be adopted?

- C. It has been suggested that item 8 on this form be revised to state "hearing" instead of "preliminary hearing" to accommodate emergency removal hearings under MCR 3.974(C).

Should this suggestion be adopted?

- D. It has been suggested that the writing space for contrary to welfare (item 3b3) and reasonable efforts (item 3b5) findings be expanded on this form.

Currently the contrary to welfare writing space allows for seven lines and the reasonable efforts writing space allows for two lines.

How many lines of writing space would be adequate for these findings? Please be aware that additional writing space may increase the number of pages of the form.

7. Discussion topic regarding MCR 3.974.

- Under 3.974(A)(3), when a parent is present at the hearing, the court may order removal by following the placement provisions in MCR 3.965(C). However, there is no provision regarding protective custody in this situation if the child's whereabouts are unknown or the child is in danger.
 - What form(s) do courts use when removing a child after a review hearing under MCR 3.974(A)(3)?
 - Is it necessary for the court to make protective custody findings under MCR 3.963(B) or do the removal findings encompass protective custody?
- Under MCR 3.974(A)(3), the procedure for removal is different if the parent is present or not present. What procedure is followed if one parent is present and the other parent is not?
- Under MCR 3.974(C)(1), the court may order a child be taken into protective custody pursuant to the conditions listed in MCR 3.963(B)(1) and upon receipt of a petition or affidavit of facts. Is this different from issuing an order under MCR 3.963(B)(1)?

**8. JC 11a, Order after Preliminary Hearing
JC 11b, Order after Pretrial Hearing
JC 49, Order of Adjudication**

It has been suggested that the finding regarding continuing jurisdiction of another court be removed from these forms (item 6 of JC 11a, item 5 of JC 11b, item 5 of JC 49).

It is no longer required that the petition list any court with prior continuing jurisdiction. Instead, a case inventory addendum is filed with each petition listing the cases the family is involved. See MCR 3.961, as amended by ADM file 2002-37. However, whenever an order affecting the welfare of a child is entered, notice must be provided to the court with prior or continuing jurisdiction. MCL 712A.3a

Do these items serve as a functional reminder for courts regarding the notice requirements under MCL 712A.3a? Should this suggestion be adopted?

In addition, modifications will be made to JC 49. MCR 3.206(A)(4) will be removed from the form because it is no longer required by MCR 3.961(B)(7). The PCS codes will be updated in the header.

9. JC 17, Order of Disposition

A. It has been suggested that active efforts findings be added to this form for removal of Indian children. Currently, active efforts findings are on the following forms:

- JC 11a, Order after Preliminary Hearing
- JC 11b, Order after Pretrial Hearing
- JC 49, Order of Adjudication
- JC 75, Order after Removal Hearing

Should this suggestion be adopted? Why or why not?

B. It has been suggested that the language “In all cases except when parental rights have been terminated” be removed from the beginning of item 10. The suggestor states that the language is inaccurate because a case service plan is created and reviewed by the court despite the termination of all parental rights.

This language was added to this form by the committee in 2006. At that time, the committee commented that the item would not apply if the parental rights of all parents were terminated or released.

Should this suggestion be adopted? Is this form used when all parental rights have been terminated or released? See also forms JC 19, Order after Dispositional Review/Permanency Planning Hearing (item 9) and JC 63, Order Following Hearing to Terminate Parental Rights.

Draft provided.

10. JC 19, Order after Dispositional Review/Permanency Planning Hearing

- A. MCL 712A.19 was amended by 2018 PA 58 to state the following (emphasis added):

At a review hearing...the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent **as provided in this subsection**, continue the dispositional order, modify the dispositional order, or enter a new dispositional order. **The court shall order the child returned to the custody of his or her parent if the return of the child to his or her parent would not cause a substantial risk of harm to the child.**

How should item 10 of this form be redesigned to accommodate the statutory amendment?

- B. In 2017, the committee considered revising item 12 (reasonable efforts to preserve and reunify the family) and item 17 (reasonable efforts to finalize the court-approved permanency plan). During the federal Title IV-E compliance audit, federal auditors indicated the separate items were confusing and somewhat redundant because reasonable efforts to preserve and reunify can be used to justify efforts towards the permanency plan of reunification. Based on this comment, it was suggested that the items be restructured. Both item 12 and item 17 are required by MCL 712A.19a(2) and MCL 712A.19a(4), respectively. At that time, members agreed that items could be restructured to reduce confusion and redundancy.

SCAO Forms and Resources Analysts request further discussion on this topic. Because the items pertain to separate required statutory and federal regulatory findings, it is unclear how to best combine these items. See MCL 712A.19a(2), MCL 712A.19a(4), and 45 CFR 1356.21.

- C. It has been suggested that item 13 of this form be restructured to a writing space. The suggestor states that cases often include parents who are at varying stages of progress towards mitigating the conditions that led to placement. By restructuring item 13 to a writing space, courts could make clear the progress of each parent. Should this suggestion be adopted?

11. JC 76, Order After Posttermination Review/Permanency Planning Hearing

- A. It has been suggested that item 18 be modified to include checkboxes to select either MCL 400.203 if the court terminates parental rights or MCL 710.29 if the parent releases their rights. The suggestor states that the selection affects funding after release. Currently the form only lists MCL 400.203. MCL 710.29 must be written in the “Other” section.

Should this suggestion be adopted?

- B. Deletion of item 24 is suggested because it is duplicative of item 16.

Draft provided.

12. JC 84, Claim of Appeal and Order Appointing Appellate Counsel

It has been suggested that the distribution section of this form be modified to include a copy to the Indian tribe if applicable.

The suggestor states that many tribes are not provided service of a claim of appeal, even though the tribe was an intervened party in the trial court. This results in the tribe not being included as a party at the appellate level.

Should this suggestion be adopted? Are there additional measures that can be taken to insure the tribe receives notice of a claim of appeal?

Draft provided.

13. New Form Request: Petition and Order Transferring Case to Tribal Court

In 2017, the committee agreed to modify JC 29, Order to Transfer Case to accommodate transferring cases from state court to tribal court under MCR 3.905(C)(1). After further review, SCAO analysts determined that JC 29 is not suitable for modification in this manner.

In lieu of modifying JC 29, a new form is presented for consideration.

Draft provided.

14. New Form Request: Order Extending Young Adult Guardianship Assistance

It has been suggested that an order extending young adult guardianship assistance form be created. The suggestor states that the new form would help clarify the process for courts in this area.

Should this form be created?

Draft provided.