



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner
Director

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MICHIGAN COURT FORMS COMMITTEE

Child Protective Proceedings Workgroup

Minutes of September 20, 2018

- Present: Ms. Kathleen Allen, 3rd Circuit Family Division – Juvenile
Ms. Kaitlin Fish, Kaitlin Fish PLC
Mr. Theodore Jay, MDHHS
Honorable Marcy Klaus, Clare/Gladwin Probate
Mr. Roderick Porter, 30th Circuit Court
Ms. Theresa Nelson, Clinton County Probate Court
Ms. Christine Piatkowski, Christine Piatkowski, P.L.C.
Mr. Thomas Scheuer, Oakland County MDHHS
Ms. Vicki Seidl, Kent County Prosecuting Attorney – Juvenile Division
Honorable Thomas Slagle, Dickinson County (Conference call)
Ms. Veronica Stillson, Van Buren County Juvenile Office
Ms. Rachael Wineland, MDHHS
Ms. Elizabeth Henderson, Child Welfare Services (Staff – Conference call)
Ms. Carol Rochester, Judicial Information Services (Staff)
Mr. Tim Schalk, Judicial Information Services (Staff)
Mr. Noah Bradow, Trial Court Services (Staff)
Ms. Sheryl Doud, Trial Court Services (Staff)
Ms. Robin Eagleson, Trial Court Services (Staff)
Ms. Rebecca Schnelz, Trial Court Services (Staff)
Mr. Matthew Walker, Trial Court Services (Staff)
- Absent: Ms. Elizabeth Eggert, Tribal State Partnership
Ms. Jenifer Pettibone, MDHHS
Casey Anbender, Child Welfare Services (Staff)

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

The committee considered adding a note to MC 70 and MC 70a to clarify that these forms are used to request a sign language interpreter. The committee agreed that the note would be beneficial because individuals often mistakenly believe sign language interpreters equate with foreign language interpreters. The committee added the following to both forms in the area above the applicant information grid: “Note: For foreign language interpreters (except sign language) use form MC 81.”

The committee also considered removing the parenthetical from item 3 on both forms that specifies examples of sign language that can be requested. SCAO staff noted that sign language technology changes frequently, so the parenthetical may not always reflect appropriate options. Under the ADA, the requester must know and request the specific accommodation he or she needs. Therefore, the committee agreed that it is not necessary to include a list of examples for sign language. The committee removed the language in question from both forms.

The committee considered draft language on MC 70a to modify the title of the order section by adding the words “To Review” at the end. The committee agreed that the modification helped to clarify that the decision reflected in the order portion was following a review and accepted the change.

The forms were approved as revised.

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

The committee considered a suggestion to insert the words “Foreign Language” before “Interpreter” in the title and section headers of each form to clarify that the forms are only for requesting foreign language interpreters and not sign language interpreters. The committee approved the suggestion as well as adding a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

The committee also considered modifying both forms at item 1 to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1). Under the court rule, an interpreter may be appointed for various individuals for various hearings and the form does not specify the time period of the appointment. SCAO staff noted that there have been issues with courts requiring parties to file a request prior to every hearing, which creates additional

obstacles for those individuals. The committee agreed that clarifying the length of appointment would be helpful. The committee added checkbox options to allow the court to specify an interpreter for a specific date or until the case is closed.

The forms were approved as revised.

3. Hearing Location and Jurist

The committee considered a suggestion to revise the notice of hearing section on court orders to include a writing space for the jurist (judge or referee) and the location, including courtroom. The suggestor stated that many parties in their court report to the judge's courtroom for a hearing, but are scheduled before a referee. SCAO staff noted that 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.

Members discussed that the method of notification to a respondent about the next hearing date and location varies from court to court. Some courts notify the individual on the record and include it in the court order, which is given to the respondent. Other courts ask the respondent to sign a waiver of notice. Other courts send a notice of hearing (JC 45) for each hearing. Members also discussed that many respondents, in their experience, do not read the copy of the court order. The variance in practice and respondents behaviors indicated to the committee that the suggested change is unlikely to have a significant impact. For that reason, the committee declined to adopt the suggestion.

The forms were not revised.

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

The committee discussed adding a checkbox option in the title area of the form to indicate whether the petition is amended. The committee agreed that the suggestion would be beneficial because it is difficult to tell whether a petition is amended and which amended petition it is. The committee added “[] ___ Amended” to the title area of the form.

The committee also discussed removing one of the writing spaces for mother (item 2g or 2h) from this form. There are two writing spaces for mother on the form to accommodate same-sex couples. However, the suggestor stated that the additional mother space makes the form confusing because petitions are typically filed as one petition per mother.

Members commented that cases arise involving two mothers, so having both writing spaces is beneficial in that scenario. Members considered changing all items to “parent” instead of “mother” and “father” but decided “parent” would be confusing because it would not be clear whether a respondent is a mother or father. The committee agreed that both items 2g and 2h should remain on the form and the suggestion was declined.

Although not on the agenda, the committee also discussed adding a line under item 2g and 2h for the names of children, similar to the lines for names of children under items 2a-2f. SCAO staff asked if item 2f could be removed to create space to accommodate the request. Members agreed with this suggestion. Item 2f was removed and lines for the names of children were added under item 2g and 2h. Items 2g through 2j will be renumbered as appropriate.

The committee also considered the comments of Elizabeth Eggert in regard to including the definition of active efforts on the form. SCAO staff commented that definitions are not typically included on SCAO-approved forms and that doing so could create a precedent. The committee agreed that the form should not include the definition.

The form was approved as revised.

STAFF NOTE: The changes to include the writing space for names of children underneath items 2g and 2h were held for further inquiry.

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

The committee considered changes to the aggravated circumstances/exceptions to reasonable efforts to preserve and reunify sections on these forms.

The committee first considered redesigning the sections in favor of a writing space. The suggestor stated that these items are not used often. A writing space would conserve space and make the form appear less confusing. The committee agreed that these items are not used often and that a writing space may be a better design.

However, MDHHS Title IV-E compliance noted that the specific language listed in the items is required for funding purposes. Members noted that redesigning the items to a writing space would not account for the specific language requirement. For that reason, the committee agreed to modify the items to comply with MCL 712A.19a(2)(c) as amended by 2018 PA 58.

The committee modified the item on each form from “involuntary termination of parental rights to a sibling of the child(ren)” to “involuntary termination of parental rights to a sibling of the child(ren) and failure by that parent to rectify the conditions that led to that termination.” The committee removed “[] the” before each item and placed it in the lead-in sentence. Finally, the committee added two lines of writing space for evidence of the aggravated circumstances.

The forms were approved as revised.

STAFF NOTE: Citation to MCR 3.206 was removed from JC 49 because it no longer applies after the 2018 amendments to MCR 3.206 and MCR 3.961. Also on JC 49, the reprint of MCL 722.638 on page 5 was updated to reflect the current statute.

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

A. The committee considered a suggestion to create a combined petition and order for protective custody to streamline processing 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 stated 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 stated 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

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).

form would allow the court to rely on the caseworker's statements when completing the order². This would be a timesaver in after-hours situations.

The committee discussed whether or not the petition referenced in MCR 3.963(B)(1) is the same petition that must be filed to initiate a case. Members reviewed MCR 3.974(C), which requires a petition to take a child into protective custody after adjudication has occurred. SCAO staff pointed out that the petition for protective custody referenced in MCR 3.974(C) cannot be the same petition used to initiate a case because the petition would have already been disposed of by the court. Members also reviewed MCR 3.963(C)(5), which requires a petition to be submitted at the first court appearance. After reviewing these three rules, members agreed that the petition listed in MCR 3.963(B)(1) is not the petition used to initiate a case. SCAO staff indicated that it is their understanding that this interpretation was shared by MDHHS in 2012 when the law was changed. However, MDHHS declined creation of a SCAO-approved form for this procedure and did not create its own form.

The committee then discussed adopting by reference the caseworker's factual allegations as allegations of the court. Members were uneasy with this proposal and appeared more comfortable writing their own findings, despite multiple members stating that the order can take 2-3 hours in the middle of the night to complete. SCAO staff asked why it made members uneasy to adopt factual allegations by reference—the court rule requires a petition and presumably the petition must be correct before the court will issue an order. Members stated that many times the caseworker's written information is incorrect. The court discovers this through a phone conversation and changes the findings. Some members stated that caseworkers still complete orders in their county and judges strike out allegations they do not adopt. MDHHS Title IV-E compliance indicated that specific written findings are better for Title IV-E compliance, but adoption of findings by reference may be allowable if it is clear which petition is being referenced.

The committee next discussed how caseworkers comply with the petition requirement of MCR 3.963(B)(1). Members stated that a majority of the time, caseworkers submit JC 04b, Petition (Child Protective Proceedings) to request an order to take a child into protective custody. The amount of information included in the petition varies from county-to-county, from a complete petition to extremely basic. Most often, the

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.

information provided in the petition is extremely basic or boilerplate because it is an emergency situation and the caseworker has limited information. Then, as the case progresses, the caseworker amends the petition (sometimes several times) after more information is obtained.

SCAO staff pointed out that this illustrates a significant procedural difference throughout the state. Caseworkers in some counties are doing hours of work to complete a petition, whereas caseworkers in other counties are providing minimal information to receive the same order to take into protective custody. Members agreed with this statement but were unsure if the process could be standardized across the state. SCAO staff commented that a standardized petition for protective custody could help in this situation, but there is no rule or statute defining what information a petition for protective custody should contain.

Based on the foregoing discussion, the committee declined to adopt the proposal. The committee suggested that a workgroup be formed to address the issues outlined here.

- B. The committee considered modifying item 6a of this form 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 stated 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. SCAO staff explained that this item came up because a police agency did not know what to do with a neglect ward who was absent without leave from his foster placement. Instead of contacting the department, the police agency ended up jailing the neglect ward.

The committee questioned whether or not a police agency contacting Centralized Intake after-hours is an appropriate action in this scenario. Members were uneasy adding the phone number to the form because there is no policy indicating that police should contact Centralized Intake. Some members expressed concern that adding the phone number would create procedure with the form. Other members indicated that police may not have after-hours contact information for local MDHHS offices and Centralized Intake could arrange for that contact. Ultimately, the committee decided to add a note to the item stating “Note: If a local MDHHS contact is unknown, you may contact centralized intake at 855-444-3911.” The committee did replace the words “the department” with “Michigan Department of Health and Human Services” to clarify for police that MDHHS should be contacted.

- C. The committee considered revising item 8 to state “hearing” instead of “preliminary hearing” to accommodate emergency removal hearings under MCR 3.974(C). Members agreed that the form is used in both preadjudication and postadjudication emergency removals and the form should accommodate that. The committee removed the word “preliminary” from item 8.
- D. The committee considered a suggestion to expand the writing space for contrary to welfare (item 3b3) and reasonable efforts (item 3b5) findings on this form. Currently the contrary to welfare writing space allows for seven lines and the reasonable efforts writing space allows for two lines. The committee agreed that additional writing space would be helpful. The committee added two lines of writing space to each finding.

The form was approved as revised.

7. Discussion topic regarding MCR 3.974.

The committee briefly discussed MCR 3.963, 3.965, and MCR 3.974.

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

The committee discussed removing the continuing jurisdiction finding 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 in which 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

The committee was uncertain about how the item is used in practice, if at all. The committee decided to table the item until next year and monitor their individual usage of it to determine if it is necessary on the form.

The forms were not revised.

9. JC 17, Order of Disposition

- A. The committee discussed adding active efforts findings to this form for removal of Indian children. The committee agreed that active efforts findings should be in this form in the same manner as other forms. The committee added the findings to item 11.
- B. The committee discussed removing the language “In all cases except when parental rights have been terminated” from the beginning of item 10. The suggestor stated that the language is inaccurate because a case service plan is created and reviewed by the court despite the termination of all parental rights. Compliance with that case service plan should be ordered in every case. This language was added to the 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.

The committee agreed that the case still continues when parental rights are terminated and the court must order compliance with the case service plan. Therefore, if a court were completing this form after termination of parental rights, the court should complete item 10. Members also discussed whether or not a court should complete this form after terminating parental rights. The committee did not arrive at a decision on this particular point.

- C. Although not on the agenda, the committee discussed the dispositional statute, MCL 712A.18 as amended by 2018 PA 58, as it pertains to form JC 17. The revised statute states, “Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court **shall order the juvenile returned to his or her parent if the return of the juvenile to his or her parent would not cause a substantial risk of harm to the juvenile or society.**” SCAO staff noted that MCL 712A.18 applies to juvenile delinquency, and abuse and neglect proceedings. SCAO staff questioned whether this statutory amendment is intended to apply in abuse and neglect proceedings. Members commented that the language appears to more closely mimic juvenile delinquency, rather than abuse and neglect. The language used in abuse and neglect proceedings usually states, “...substantial risk of harm to the child's life, physical health, or mental well-being.” See, for example, MCL 712A.2 and 712A.13a. The use of the word “society” in the statutory amendment is more often used in juvenile delinquency. Based on this, the committee decided not to revise JC 17.

The form was approved as revised.

STAFF NOTE: After internal discussion, a new item 11 was added to the form to accommodate MCL 712A.18 as amended by 2018 PA 58. Subsequent items and internal references were renumbered.

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

- A. The committee considered revising item 10 on this form to accommodate MCL 712A.19 as amended by 2018 PA 58. The revised statute states 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.**

The committee agreed that the amended statute requires a finding regarding the returning of the child to his or her parent. SCAO staff suggested removing the checkbox before item 10, which would then make the item mandatory instead of optional. The committee agreed with this suggestion and removed the checkbox.

- 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 these items could be restructured to reduce confusion and redundancy.

The committee reconsidered this item after the SCAO staff requested further discussion on this topic. Because the items pertain to separate required statutory and federal regulatory findings, SCAO staff is unclear how to best combine these items. See MCL 712A.19a(2), MCL 712A.19a(4), and 45 CFR 1356.21. The committee stated that combining the items does not make sense if the permanency plan is not reunification.

Members agreed that the items should remain as standalone items because Michigan law requires two separate findings.

- C. The committee considered restructuring item 13 of the form into a writing space. The suggestor stated 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.

Members thought a blank writing space may lead courts to overwriting in this section. Instead, members thought including a blank line to allow the court to write in names would be sufficient.

The committee modified the item to state “[] was made by _____ [] was not made by _____ in accordance with MCL 712a.19(7).”

The form was approved as revised.

STAFF NOTE: Item 13 was modified to state:

- [] 13. In accordance with MCL 712A.19(7), progress toward alleviating or mitigating the conditions that caused the child(ren) to be placed or to remain in temporary foster care

[] was made by _____ (List names) _____.

[] was not made by _____ (List names) _____.

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

- A. The committee considered modifying item 18 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 stated 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.

The committee agreed with the suggestion, but thought that a parenthetical should be added to make it clear what the statutes apply to. The committee considered several options, but decided to include “MCI ward” after MCL 400.203 and (Adoption code) after MCL 710.29. Members also pointed out that the remainder of the sentence stating “commitment to the department for permanency planning, supervision, care, and placement under MCL 400.203 continues” may no longer apply if MCL 710.29 is selected.

The committee revised item 18 to state, “[] 18. The child(ren)’s commitment under [] MCL 400.203 (MCI Ward) [] MCL 710.29 (Adoption code) continues.” The committee also removed “The child(ren)’s commitment to the department for permanency planning, supervision, care, and placement under MCL 400.203 continues and” from item 19 because it is duplicative of item 18.

- B. The committee considered deleting item 24 because it is duplicative of item 16. Committee members agreed that item 24 references the same issues as item 16. See MCL 712A.19c(9) and MCR 3.979(C). The committee removed item 24 and replaced the words “should be” with “is” in item 16 to clarify that the court is ordering termination of jurisdiction. The remaining items will be renumbered appropriately.

The form was approved as revised.

STAFF NOTE: During typesetting, it was discovered that a number of findings were mistakenly placed in the order section of this form. Items 12-17 on the 9/16 version of the form were relocated into the findings section. The words “should be” were retained in item 16. Item 24 was not deleted. Numbering and internal references were corrected appropriately.

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

The committee considered modifying the distribution section of the form to include a copy to the Indian tribe, if applicable. The suggestor stated 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.

The committee agreed that the Indian tribe should be included in the distribution. Members also commented that the tribe should be included in the note at the bottom of the form. However, the note is directly from MCR 3.977(J)(2)(b) and the Indian tribe is not explicitly called out in that portion of the rule. For that reason, members did not include the Indian tribe in the note.

The committee added the “Indian tribe (if applicable)” to the distribution of the form.

The form was approved as revised.

STAFF NOTE: After internal discussion with Supreme Court Administrative Counsel and the SCAO Forms and Records manager, the words “Indian tribe (if any)” were added to the

note at the bottom of the form. Although not included in MCR 3.977(J), under 25 USC 1912(c) an Indian tribe has the right to intervene. If an Indian tribe is an intervenor party in the case, that tribe should receive a copy of the claim of appeal and order appointing appellate counsel.

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 staff determined that JC 29 is not suitable for modification in this manner. Instead, SCAO staff presented a new form for consideration titled Petition and Order Transferring Case to Tribal Court.

The committee agreed that creating a new form is appropriate because MCR 3.905(C) requires a petition to transfer to a tribal court. Form JC 29 is only an order. The committee considered the comments from Ms. Elizabeth Eggert. The committee agreed with Ms. Eggert's comments and made the following changes to the draft:

- Item 2 was rephrased to state "The Indian child's tribe is _____."
- In item 3, the phrase "authorized representative of the child's Indian tribe" was replaced with "official tribal representative" as provided in MCL 712B.3(r).
- Item 4 was rephrased to state, "I petition the court to transfer this proceeding to the Indian child's tribal court."
- The phrase "authorized Indian tribe representative" was replaced with "official tribal representative" as provided in MCL 712B.3(r) under the signature line.
- A note was added below the Acceptance/Rejection of Transfer section stating, "After acceptance or rejection of the transfer, the tribal court must send a copy of the acceptance or rejection to the state court."

The form was approved as revised.

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

The committee considered creating an order extending young adult guardianship. The suggestor stated that the new form would help clarify the process for courts in this area. The committee also considered the comments from SCAO Child Welfare Services stating that the form has been requested several times.

The committee generally agreed with creating the form, stating that it appears it will assist courts. However, members were unclear about the purpose of the form. Under MCR 3.979(C)(1)(b), the Michigan Department of Health and Human Services is required to notify the court of extended guardianship assistance. After receiving notification from the department, the court retains jurisdiction over the guardianship until the youth no longer receives extended guardianship assistance. Under MCR 3.979(D)(1)(b), the court must conduct an annual review to determine that the guardianship meets the criteria under MCL 400.667. The determination is made in an order. Then, the court must provide a copy of the order to the department.

Members were unclear about which court rule requirement the form is intended to address. The committee requested that SCAO staff further investigate and create the form if it is still necessary to do so.

STAFF NOTE: SCAO staff is investigating this form for creation, as requested by the committee.