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M E M O R A N D U M

DATE: November 21, 2000

TO: Chief Judges
cc: Court Administrators and Clerks of Court

FROM: John D. Ferry, Jr.

SUBJ: SCAO Administrative Memorandum 2000-09
Petition for Testing of Infectious Disease (2000 Public Act 37)

MCL 333.5205(3), allows the employer of a police officer, fire fighter, local correctional officer or other county employee, a court employee, or an individual making a lawful arrest to file a petition in the circuit court if an infectious disease test subject refuses to undergo a test for HIV infection, HBV infection, or HCV infection, or all or a combination of the three infections, if requested by the officer, employee, or an arresting individual pursuant to MCL 333.5204.

District Court Added

Legislation effective March 17, 2000, amended this section by also allowing the petition to be filed in the appropriate district court.

Physician Review Panel

A 3-physician review panel is no longer required prior to the issuance of an order under MCL 333.5205(3). However, petitions under subsection 333.5205(1) are still **filed only in circuit court and review panels are required** where a Community Health Department representative or local health officer has determined that an individual is a carrier and a health threat to others and has issued a warning notice with a requirement for medical tests to verify the person's status as a carrier under MCL 333.5203.

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Hearing Scheduled and Appointment of Counsel

Upon receipt of a petition filed under subsection (3) the court shall fix a date for hearing that shall be as soon as possible but **not later than 24 hours** after the time and date the petition is filed. The purpose of a hearing is to determine whether the allegations set forth in the petition have been proven. Notice of the hearing shall include notice of the proposed test subject's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel. As provided in MCL 333.5205(12), if the individual is unable to pay the cost of counsel, the **circuit court** is responsible for appointing and paying for counsel. In order to avoid unnecessary delay, the circuit court should provide, by local administrative order, for immediate assignment of counsel in these matters upon the order for district court, or develop an alternative means for immediate appointment.

Notice

Notice of the petition and the time and place of the hearing shall be served personally on both the proposed test subject under MCL 333.5204 and the petitioner within a time period that is reasonable under the circumstances. If notice of hearing is waived and filed in writing the petition may be heard immediately.

Hearing by Judge

There is **no authorization** pursuant to MCL 600.8511 et. seq. allowing district court magistrates to handle these proceedings. Each district court should determine the method by which petitions will be presented to a judge, and communicate these procedures to local law enforcement. A procedure must be implemented to provide for conduct of a hearing within the mandatory 24-hour period when the court is not open for business.

Forms

The State Court Administrative Office revised applicable forms for this procedure and mailed camera ready copies of MC 72 Petition for Testing of Infectious Disease, MC 73 Notice of Hearing on Petition for Testing of Infectious Disease, and MC 74 Order Following Hearing on Petition for Testing of Infectious Disease to all circuit, district, and probate court forms contact persons June 1, 2000. Previous forms CC 72 through CC 76 are obsolete and should be destroyed.

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Filing Fee and Case Type Codes

A civil case should be opened without a filing fee. In the circuit court, case type code ID should be used. In the district court, case type code GC should be used through December 2001, and GZ beginning January 2002.

For further information contact Sandi Hartnell or Amy Byrd at SCAO, Trial Court Services (phone 517-373-7498).

Attachment: 2000 Public Act 37