



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

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Kelly Howard
Director

MEMORANDUM

DATE: March 1, 2012

TO: Chief Circuit Court Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Kelly Howard, Director

RE: SCAO Administrative Memorandum 2012-02
Termination of Parental Rights – Procedure Under MCR 3.977(J)
Supersedes SCAO Administrative Memorandum 2006-06

The following information will aid courts in processing claims of appeal and requests for appointment of appellate counsel after a termination of parental rights pursuant to the Juvenile Code. The relevant SCAO forms are JC 84 (Claim of Appeal and Order Appointing Appellate Counsel) and JC 44 (Advice of Rights After Order Terminating Parental Rights). Those forms are available at <http://courts.mi.gov/scao/courtforms/juvenile/juvindex.htm>. If you have any questions about Administrative Memorandum 2012-02, please contact Jodi Latuszek at 517-373-4987 or latuszekj@courts.mi.gov.

Administrative Memorandum 2012-02 replaces Administrative Memorandum 2006-06. Most of the content remains unchanged, but 2012-02 adds to the list of hearing transcripts that should be ordered for appellate purposes. The list provided in 2006-06 did not include removal hearings and preliminary hearings. Additionally, 2012-02 includes current contact information for the chief clerk of the Court of Appeals.

Administrative Memorandum 2006-06 stated that appointed counsel should order any necessary additional transcripts within a “reasonable time,” but 2006-06 did not define that term. Administrative Memorandum 2012-02 recommends that counsel order any additional transcripts within 28 days of the claim of appeal, which is consistent with the Court of Appeals internal operating procedures.

The procedure for appointment of appellate counsel and initiation of the appellate process following termination of parental rights pursuant to the Juvenile Code is outlined in MCR 3.977(J), which provides that:

- Requests for counsel to appeal an order terminating parental rights *must* be made within 14 days after notice of the order terminating parental rights is given, or 14 days after notice of an order denying a timely filed post judgment motion.
- If the respondent parent files a timely request for appointed counsel and the court determines that the respondent is financially unable to retain an attorney, the court must enter an order of appointment within 14 days after the request for counsel is made.
- The chief judge of the trial court bears primary responsibility for ensuring that the appointment is made in a timely manner.
- The trial court is responsible for completing form JC 84 (Claim of Appeal and Order Appointing Appellate Counsel). The form must include:
 - Names of the children affected by the appeal.
 - Name and address of the petitioner.
 - Name of one respondent per appeal.
 - Date of the order terminating parental rights.
 - Date of the request for appointment of appellate counsel.
 - Name, address, and telephone number of the attorney appointed to represent the named respondent on appeal.
 - Dates of hearings for which transcripts will be requested and the name of the court reporter who transcribed those hearings.

The trial court should send the completed original Claim of Appeal and Order Appointing Counsel to the Court of Appeals along with the order being appealed, the complete register of actions, and a proof of service that the claim of appeal and supporting documents were served on the parties listed in MCR 3.977(J)(2)(b). Please note that these forms can also be electronically filed with the Court of Appeals via the Odyssey File and Serve System (accessed at <https://wiznet.wiznet.com/appealsmi/login.jsp>).

The information about requested transcripts is used by the Court of Appeals to track the production of those transcripts. A properly completed transcript request helps prevent appellate delays that will unnecessarily delay achieving permanency for the children involved. A complete transcript order should contain: the name of each court reporter, the reporter's R-number, and the date of each proceeding to be transcribed for the appeal.

MCR 3.977(J)(1)(b) provides that the trial court will “furnish the attorney with the portions of the transcript and record the attorney requires to appeal.” Although the trial court is responsible for preparing the initial transcript order, appointed counsel should request any additional transcripts required for a thorough appellate review within 28 days from the date the claim of appeal is filed with the Court of Appeals. Transcripts of the following proceedings (if held) should be ordered for appeal:

- Removal hearing, MCR 3.963; and (for an Indian child) MCR 3.967.
- Preliminary hearing, MCR 3.965.
- Adjudication trial, MCR 3.972.
- Dispositional hearing, MCR 3.973.
- Dispositional review hearings, MCR 3.974; MCR 3.975.
- Permanency planning hearing, MCR 3.976.
- Termination hearing, MCR 3.977.

If a plea hearing is held separately from any of the proceedings listed above, that transcript should also be ordered. Additionally, if appointed counsel requests transcripts of hearings not listed above, the trial court should furnish those transcripts if they are ordered within a reasonable time and if the attorney can demonstrate that the additional transcripts are necessary for appellate review.

Questions about the Claim of Appeal (Form JC 84) may be addressed to:

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