



## Michigan Supreme Court

State Court Administrative Office

**Trial Court Services Division**

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### MEMORANDUM

DATE: December 23, 2009

TO: Circuit Court Judges  
Probate Court Judges  
County Clerks  
Probate Registers  
Juvenile Registers

FROM: Jennifer Warner, Management Analyst

RE: Juvenile Guardianship Guidelines for Transfer of Jurisdiction,  
Child Support, and Funding Issues

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This memorandum provides guidelines for the Family Division of Circuit Courts on transfer of cases, child support, and IV-E funding issues as they arise in the context of juvenile guardianships.

#### **Background**

In July 2008, MCL 712A.19a and MCL 712A.19c were amended to allow courts to order juvenile guardianships as a permanency plan for a child in a child protective proceeding. Effective July 1, 2009, the Michigan Supreme Court amended MCR 3.901, 3.903, 3.921, 3.965, 3.975, 3.976, 3.977, 3.978, and adopted new rule 3.979, which provide the procedural steps for appointing, terminating, and revoking a juvenile guardianship.

#### **Transfer of Jurisdiction**

The amended statutes do not address transfer of juvenile guardianship cases if a juvenile guardian relocates to another county within the state. The judge who handled the neglect and abuse case and determined that the juvenile guardianship was the best permanency option should continue to retain supervision of the case. The juvenile guardian has consented to the continuing jurisdiction of the appointing court and so a transfer for the guardian's convenience is not necessary.

However, the court may still decide that a transfer would be appropriate. MCR 3.901(B)(1) provides that MCR 3.901-3.928 apply to child protective proceedings. MCR 3.926 provides for transfer of jurisdiction or change of venue in child protective proceedings. This rule was adopted before juvenile guardianships were developed by the Legislature. Because MCR 3.926 was not written with juvenile guardianships in mind, the rule does not provide clear guidance on transfer of a juvenile guardianship. In a juvenile guardianship, there is a neglect/abuse case that was adjudicated, and at a later point in time the court determined that the proper permanency option for the child was a juvenile guardianship. MCR 3.926(E) provides for transfer for “bifurcated proceedings,” where the adjudication occurs in the transferring court and disposition occurs in the receiving court. This subsection most closely follows a scenario where a guardianship is put in place in one county and then the parties want to transfer it to another, more convenient county. MCR 3.926(E) states:

Bifurcated Proceedings. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.

The same process should apply for juvenile guardianships; prior to transferring a juvenile guardianship to another county, the transferring court should get permission from the receiving court to send the case. The transferring court should contact the court in the receiving jurisdiction to determine if that court will accept the transfer. If the court accepts the transfer, the transferring court should send the original case file or certified copies of the case file to the receiving court.<sup>1</sup>

Pursuant to MCR 3.979(F)(5)-(6), upon revocation of a juvenile guardianship, (this includes action on a petition to revoke a juvenile guardianship as well as a petition to terminate a juvenile guardian when there is no appointment of a successor guardian), the jurisdiction over the child in the original neglect/abuse case is reinstated. If the case has been transferred from the county that handled the original matter to a receiving court, this would place the receiving court in the position of reopening a neglect/abuse case in another county. Because the juvenile guardianship case was transferred and not the neglect/abuse case, when the neglect/abuse case is re-opened it should be re-opened in the county that established the juvenile guardianship. This will require both courts to collaborate to ensure that when the neglect/abuse case needs to be reopened, the receiving court immediately notifies the original court so they may schedule the next dispositional review hearing within 42 days of the revocation. MCR 3.979(F)(7).<sup>2</sup> In addition,

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<sup>1</sup> The Case File Management Standards, Component 11, contain the detailed requirements for case transfer. They may be viewed at [http://courts.michigan.gov/scao/resources/standards/cf\\_std.pdf](http://courts.michigan.gov/scao/resources/standards/cf_std.pdf).

<sup>2</sup> The court that is reopening the neglect/abuse case will be placing the child under the care and supervision of the Department of Human Services (DHS). The court should contact DHS in the county where the neglect/abuse case is reinstated to notify them of the pending case. DHS is required to submit a case service plan seven days before the dispositional review hearing and they will need time to investigate and prepare a report.

the receiving court should send copies of the juvenile guardianship file to the original transferring court in order to provide a complete history of the case.

### **Child Support**

A juvenile guardian has all of the rights and duties set forth in MCL 700.5215 of the Estates and Protected Individuals Code (EPIC). MCL 712A.19a(8) and 712A.19c(7). A guardian may receive money for the ward's support. Before issuing any child support order, the court must first find whether (1) any state has issued a support order for this child, or (2) a Michigan circuit court has continuing jurisdiction over child support, custody, or parenting time.

#### ***Support Order Exists***

If a circuit court has issued an order for a parent to pay support for a child, do not issue a new order obligating the same parent. MCR 3.205(C) requires that due consideration be given to prior continuing orders of other courts, and prohibits entry of contrary or inconsistent orders, except as provided by law.<sup>3</sup>

If a Michigan court has issued a child support order for this child, pursuant to MCL 552.605d, support payments should be redirected to the juvenile guardian. See [SCAO Administrative Memorandum 2005-04](#). The guardian should contact the friend of the court office in writing and request an administrative change of recipient. Based on the changed physical custody, the office should also initiate a review of the obligation pursuant to MCL 552.517(1)(b), and seek modification of the obligation.<sup>4</sup> If both parents were not previously ordered to pay support and the issuing court has continuing jurisdiction over the parent not ordered to pay support, the office should also recommend an obligation for the other parent unless doing so would be inconsistent with the permanency plan.

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<sup>3</sup> There may be circumstances in which a court in a different jurisdiction will need to establish or modify a support obligation even though another court has entered a support order. MCR 3.205 talks about the interaction of the two courts. MCR 3.205(C)(2) provides that the subsequent court cannot enter orders contrary or inconsistent with other orders except as provided by law. This language can be read strictly to prohibit any inconsistencies or more liberally to provide that the subsequent court cannot enter inconsistent orders that run concurrently with existing orders. MCR 3.205(D)(4) provides that upon receipt of an order from the subsequent court the prior court must take steps to implement the order in the prior court. The fact that the rule requires the prior court to implement a subsequent court's order at least contemplates that there may be some degree of inconsistency between the two orders. The neglect/abuse case necessarily contradicts the custody issues in the domestic relations case. It does so by law. However, the custodial change does not occur in a vacuum. The court must also implement a permanency plan that may require parenting time modification as well as a determination of how parents use their assets to provide a safe and secure environment for their children. While the neglect/abuse case cannot modify that which has already been done (the order for custody, parenting time, support, and arrears), it has already suspended the custody provisions of the prior order. It makes sense that the court with subsequent jurisdiction would also have ancillary jurisdiction over the issues of support and parenting time that flow from its jurisdiction over the child and the parents. Thus, those issues over which the court has jurisdiction and matters ancillary to it, should be handled in the neglect/abuse case and must be honored by the prior court. A subsequent court cannot change the amount of a current charge or the accumulated arrearage, but the issue of whether the order should continue to accrue is appropriate.

<sup>4</sup> The change in custody, third party custodian calculation, and change in parental time offset will cause a significant change in circumstances to justify modification.

State and Federal laws require recognition and prohibit modification of another state's order unless certain conditions are met.<sup>5</sup> If another state has issued an order for a parent to pay support for a child, do not issue a new order.<sup>6</sup> If a friend of the court office already has an interstate case involving the child, direct the guardian to request IV-D services through the office<sup>7</sup> and work with that office to seek redirection of support to the guardian, and as necessary, modification of the order in an appropriate venue.

If another state has issued an order for a parent to pay support, but a friend of the court office does not have a case involving the child, direct the guardian to request IV-D services through a friend of the court office, so it can evaluate the case and as appropriate, seek redirection of payments, and initiate modification of the order in an appropriate venue.

***No Support Order Exists for This Child***

If a circuit court has a pending action involving child support, custody, or parenting time, or continuing jurisdiction over such matters because of a prior action involving the same parents, MCR 3.204 controls the new action to establish a child support obligation. The guardian should request IV-D services to establish an obligation,<sup>8</sup> and the matter should be heard in the venue determined by that rule.

However, if no other pending or prior action involving child support, custody, or parenting time involving a parent exists and the court has not terminated a parent's rights,<sup>9</sup> the court should establish support after the juvenile guardian is appointed but while the neglect/abuse case remains pending. MCR 3.973(F) provides courts with the authority to order child support in child protective proceedings. Support orders entered pursuant to this rule must comply with MCL 552.605 and MCR 3.211(D).

The court must find that the proofs in the case satisfy the requirements for ordering child support, in a protective proceeding, under one of these laws:

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<sup>5</sup> Uniform Interstate Family Support Act (UIFSA) MCL 552.1101 et seq., and Full Faith and Credit of Child Support Orders Act (FFCCSOA) 28 USC 1738B.

<sup>6</sup> If another state's tribunal has issued a support order and the issuing state retains jurisdiction to modify it, the appropriate remedy would be to seek modification in the issuing state. If the child and parties no longer reside in the issuing state or if the issuing state has lost jurisdiction to modify, register the order in a state with jurisdiction over the non-movant for the purpose of modification. 28 USC 1738B(i)

<sup>7</sup> Many offices will accept a direct application for IV-D services. Anyone can request IV-D services from the Office of Child Support by calling 866-540-0008, or by completing and returning an application form.  
[http://www.michigan.gov/documents/DHS-1201\\_136519\\_7.pdf](http://www.michigan.gov/documents/DHS-1201_136519_7.pdf)

<sup>8</sup> Anyone can request IV-D services from the Office of Child Support by calling 866-540-0008, or by completing and returning an application form. Upon receiving a IV-D case referral from OCS, the prosecutor's office will assist in establishing an order of support.

<sup>9</sup> There is legal support for ordering child support after parental rights are terminated up until the time the child is adopted. See *Evink v Evink*, 214 Mich App 172, 175-76 (1995). A discussion of this issue is outside the scope of this memorandum.

Emancipation of Minors Act;  
Paternity Act;  
Family Support Act;  
Uniform Interstate Family Support Act; or  
Divorce Code.

The guardian may request the support order, or the court may enter a support order on its own motion.

MCR 3.973(F)(5), by referencing MCL 522.605, requires the court to use the Michigan Child Support Formula to set the amount of support. Sections 4.01 and 4.02 of the Michigan Child Support Formula provide guidance on setting child support for third party custodians and other special custody arrangements for children.

MCR 3.211(D)(1) provides that child support must be prepared on the [Uniform Support Order \(FOC 10\)](#). For additional information on issues related to filing and captioning the order, see [SCAO Administrative Memorandum 2008-01](#) section E on MiCSES Implications, and [FAQ 2008-02 on Ordering Child Support in Child Protective Proceedings](#).

If a child is placed with a juvenile guardian and the neglect/abuse case is terminated prior to entering an order of support, the guardian may file a separate support action to obtain child support. If the guardian requests IV-D services, the prosecutor's office will assist in establishing an order of support.

#### **Title IV-E Funding Considerations**

In order to maintain a child's eligibility to receive federal Title IV-E funding after a juvenile guardianship is revoked and the neglect/abuse case is reinstated, the court must make contrary to the welfare findings and place the child with the Department of Human Services (DHS). The placement with DHS is considered a new placement episode and the initial IV-E criteria would apply. Therefore, a contrary to the welfare finding against the juvenile guardian must be made.<sup>10</sup> (See JC 100 #6, JC101 #6). This may be as straightforward as finding that it is contrary to the welfare of the child to remain with the guardian because the guardian is unable to handle the child's behaviors, or that the guardian does not have the financial ability to continue to care for the child. This does not mean that a new petition alleging neglect/abuse needs to be filed against the guardian.

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<sup>10</sup> The contrary to the welfare findings are made against the juvenile guardian, not the child's parents. For IV-E eligibility, the contrary to the welfare findings have to be made against the parent or specified relative that the child has been living with for the last six consecutive months. Therefore, in a juvenile guardianship, the findings need to be made regarding the juvenile guardian, with whom the child has been living. If the guardianship fails before the child has been placed with the guardian for six months, we recommend the court make reasonable efforts and contrary to the welfare findings regarding both the juvenile guardian and the parents.

If the court does not make a reasonable efforts finding in the order revoking the juvenile guardianship, then in the first neglect/abuse hearing following the revocation of the juvenile guardianship the court should make findings regarding reasonable efforts to prevent the removal. DHS should provide the court with the reasonable efforts that occurred to maintain the guardianship, find a successor guardian, or return the child to his or her parents. These findings need to be made within 60 days of the removal (the order revoking the juvenile guardianship and placing the child with DHS).

Please note that the child's eligibility for IV-E funding depends upon more than just the reasonable efforts and contrary to the welfare findings.

### **Juvenile Guardianship Assistance**

Juvenile Guardians may be eligible for guardianship assistance. The court may not order guardianship assistance payments. DHS is responsible for determining the eligibility of a guardian for the guardianship assistance program. If the guardian is seeking assistance, the guardianship assistance agreement must be signed *before* the court orders the guardianship. If the court orders the guardianship prior to signing the assistance agreement, the guardian will not be eligible for guardianship assistance. For more information on eligibility for juvenile guardianship assistance, please contact DHS.

### **Indian Child Welfare Act (ICWA)**

ICWA applies to juvenile guardianships. ICWA applies to any "child custody proceeding" involving an Indian child. ICWA provides that "child custody proceedings" include "foster care placement," which is defined as:

...any action removing an Indian child from his parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. 25 USC 1903(1)(i).

A juvenile guardianship ordered pursuant to MCL 712A.19a meets the definition of a "child custody proceeding" under ICWA. In addition, ICWA is also applicable to juvenile guardianships that are ordered after the termination of parental rights pursuant to MCL 712A.19c. ICWA's definition of "child custody proceedings" also includes "preadoptive placement," which is defined as "the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement." 25 USC 1903(1)(iv). Therefore, ICWA is applicable to juvenile guardianships.

At the time the court orders a guardianship for an Indian child, the court should be complying with ICWA in the neglect/abuse case. Once the neglect/abuse case is terminated, the court must still comply with ICWA. For information on the specific requirements of ICWA, please see the [Indian Child Welfare Act of 1978: A Court Resource Guide](#). Please note that if a court revokes a juvenile guardianship, the court is required to provide notice to the parties, which, if the child is a

member of a federally recognized Indian tribe, includes notice to “the child’s tribe, Indian custodian, or if the tribe is unknown, the Secretary of the Interior.”

If you have any questions, please feel free to contact Jennifer Warner, Trial Court Services Management Analyst, at 517-373-7454 or [warnerj@courts.mi.gov](mailto:warnerj@courts.mi.gov).

## **Juvenile Guardianships Frequently Asked Questions**

### **When is the JG case opened? Who opens the juvenile guardianship case? Who pays the filing fee?**

A JG case is opened when the court determines that a juvenile guardianship is the appropriate permanency option for a child. The clerk opens the juvenile guardianship. There is no filing fee because no petition is filed to establish the guardianship. The court is establishing the guardianship.

### **What is the first document in a JG case, because there is no petition?**

The first documents in the JG case are the order appointing a juvenile guardian (JC 91), the Order Following PPH or Post Termination Review (JC 19 or JC 76), the Acceptance of the Appointment (JC 92), and the Letters of Juvenile Guardianship (JC 93).

### **What is the case code and caption for the juvenile guardianship case?**

The case code for juvenile guardianships is JG. The caption is "In the Matter of [insert child's name]".

### **If there is more than one child in a case, may the court use one order with multiple names and case numbers when establishing a guardian for several children in the same family?**

No, each child should have a separate order appointing a guardian.

### **Does the court have to issue the Letter of Guardianship?**

Yes. MCR 3.979(B)(2) requires the court to issue letters of authority.

### **If the guardian resides in another county, should the court with the neglect/abuse case process the guardianship or should it be established in the county where the guardian resides?**

The guardianship is a permanency option in a neglect/abuse case and the guardianship stays with that case and that judge. After the guardianship is in place and the neglect/abuse case is closed, the court may transfer the action to another county if the other county agrees to accept the transfer. For more information, please see the discussion of transfers, in the preceding memorandum.

### **Does the lawyer guardian ad litem (LGAL) from the neglect/abuse case continue to represent the child in the juvenile guardianship case? Is the child represented by an LGAL during the annual review?**

The appointment of the LGAL in the neglect/abuse case terminates upon entry of the order terminating the court's jurisdiction in the neglect/abuse case. If the court wishes to have the LGAL continue to serve in the JG case, the court should order the appointment of the LGAL in the JG case. MCR 3.979(C).



**Is the court required to hold the annual review at a hearing, or is paper review sufficient?**

The court is required to conduct an annual review of the guardianship pursuant to MCR 3.979(D)(1). The court rules do not define the term “conduct.” It is up to the court to determine if it will conduct those reviews based upon the annual report submitted without a hearing, or whether it will notice the parties and conduct a hearing.

**What should a court do for non-reporting JGs?**

MCR 3.979(D)(1) provides that if a juvenile guardian has not filed the annual review, the court shall take “appropriate action.” Appropriate action may include, but is not limited to, any action deemed appropriate by the court, including sending a reminder letter to the juvenile guardian or ordering DHS to investigate.

**Is the court required to comply with the requirements in MCR 5.203 for fiduciary tracking in juvenile guardianship cases?**

No. MCR 5.203 governs matters in probate court. Juvenile guardianships are not in probate court; they are in the family division of circuit court.

**Does DHS keep their case open and provide services to the juvenile guardian?**

No. DHS closes its neglect/abuse case after the first review. However, if the case qualifies for guardianship assistance, there will be a guardianship assistance agreement that will outline the services the guardian will receive (services will be similar to post-adoption services).

**Does DHS have to continue to provide services to the parent if parental rights have not been terminated?**

No. DHS will close the neglect/abuse case once permanency, a juvenile guardianship, is attained.

**Once a juvenile guardianship is established, will the same judge stay on the case or will the case be transferred to another judge?**

The judge that handled the neglect/abuse case and established the guardianship is the judge that should handle the juvenile guardianship case. If the juvenile guardian does not live in the county where the guardianship is established, he or she may petition the court to request the transfer of the case to another county. In those circumstances, the court should follow the guidelines for transfer provided above.

**Can the court appoint co-guardians in juvenile guardianship cases?**

The statutes or court rules governing juvenile guardianships do not address the court’s authority to appoint co-guardians. MCL 712A.19a and 712.19c provide that the court may appoint “a guardian.” MCL 8.3b provides that when construing a Michigan statute, “[e]very word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number . . . .” Therefore, a court may determine that pursuant to MCL 712A.19a and 712A.19c the court may appoint more than one guardian, i.e. co-guardians, for a juvenile.

**If a juvenile guardianship is revoked, does a new neglect/abuse petition and case get filed?**

No. When the court revokes the guardianship and places the child under the care and supervision of DHS, jurisdiction over the child in the previous neglect/abuse case is reinstated. MCR 3.979(F)(5). The court must hold a dispositional review hearing within 42 days of revocation.

**If a neglect/abuse case resulted in a juvenile guardianship and that guardianship fails and the neglect/abuse case is reopened and a new juvenile guardianship is determined to be the appropriate action, should a new JG case be opened, or should the court reopen the previous JG case with a new guardian?**

The court should open a new JG case for the new juvenile guardianship and assign a new case number.

**Upon revocation of a guardianship, whom should the court notify?**

The court should notify all of the parties entitled to notice pursuant to MCR 3.921(C).

**Does the court administratively close the case when the minor emancipates or if the child dies?**

Upon notice of the child's death, the court shall enter an order of discharge. The court may schedule a hearing before entering this order. MCR 3.979(D)(4).

Upon emancipation, by operation of law the guardian is discharged. MCL 712A.19a(7)(c). Emancipation occurs when any of the following happens:

- When a minor is validly married.
- When a person reaches the age of 18 years.
- During the period when the minor is on active duty with the armed forces of the United States. MCL 722.4.

For record keeping purposes, the court may choose to, but is not required to, enter an order administratively closing the case.

**If a juvenile has assets, how are they handled in the juvenile guardianship?**

Juvenile guardianships are not set up to handle a juvenile's assets. If a juvenile has assets, the proper course of action would be to establish an EPIC conservatorship.