



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

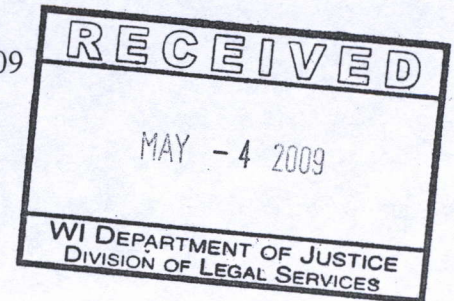
MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson  
Chief Justice

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A. John Voelker  
Director of State Courts

April 28, 2009



J. B. Van Hollen  
Attorney General  
State of Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Re: Electronic access to child protection cases for corporation counsel

Dear Attorney General Van Hollen:

I am writing to request clarification of an informal opinion letter dated March 6, 2006, sent to my office by Assistant Attorney General Alan Lee. My office has consulted with Attorney Jennifer Lattis about this, who asked that we put this request in writing for you.

Your office has provided us with guidance on the extent to which confidential court records may be electronically shared with certain agencies through a restricted area of the Wisconsin Circuit Court Access (WCCA) website. The 2006 letter clarified a similar letter your office sent us on October 14, 2002; it also is related to a letter your office sent to Walworth County corporation counsel on May 5, 2005. Shared electronic access is a popular topic but not an easy one, especially when confidential information is involved.

In 2006, Dane County Corporation Counsel requested electronic access to several case types, including child in need of protection services (CHIPS) and termination of parental rights (TPR). Your office advised:

In Dane County the district attorney's office is the most frequent petitioner in CHIPS petitions but occasionally a private attorney files a petition on behalf of a relative who wants to protect a relative. The corporation counsel's office, however, is not a petitioner and therefore cannot be provided general access to these cases. To the extent that corporation counsel needs information from CHIPS cases when they result in the termination of parental rights petitions and adoptions, the corporation counsel must seek access under one of the exceptions to Wis. Stats. §48.396.

Termination of parental rights petitions and subsequent adoptions are generally filed by corporation counsel in Dane County, but private attorneys also file these petitions. There is no statutory authority for granting corporation counsel access to the privately filed cases, therefore, unless the system allows cases privately filed to be segregated,

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corporation counsel cannot be granted general access to termination of parental rights cases.

Dane County has recently transferred the authority to represent the public in CHIPS and TPR cases from the district attorney to the corporation counsel, by resolution made in accordance with the provisions of 48.09(5). This includes both new cases and the transfer of old cases. Accordingly, corporation counsel wants to know if that office can now have access to CHIPS and TPR cases on the WCCA restricted site.

As we noted in our earlier request, WCCA is the web-based version of the court's CCAP case management system. In addition to the public website, the court has a restricted site that can be accessed only by persons having passwords. Like the public site, the restricted site contains case names, numbers, charges, court record events, and dispositions. Access to each county and each case type (juvenile delinquency, CHIPS, TPR, etc.) is granted separately. The site cannot be programmed in a way that would permit an agency access only to its own cases. Once inside the site, users may browse and search all of the cases for that case type in that county, regardless of which agency or attorney filed them. The court system has no statutory duty to provide a website for the public, nor any duty to create a restricted site for other justice agencies.

I have two questions pertaining to the paragraphs quoted above.

1. In CHIPS cases, is the representative of the public interest entitled to access because they are counsel for most of the caseload? Or should they be denied access because they will also be able to view privately filed cases in which the public is not a party?

The JC (CHIPS) case type includes a number of family situations listed under §48.13. Although most of these petitions are filed by a representative of the public interest under 48.09(5), there are some cases where the county does not have an interest in the case. We looked at cases recently filed in Dane County to ascertain the percentage of privately filed cases where the DA or corporation counsel was not the petitioning agency. In 2007, the privately filed cases were 7.7% of the CHIPS caseload; in 2008 they were 9.2%.

2. In TPR cases, is the representative of the public interest entitled to access by virtue of §48.417(1) & (2)? Or should they be denied access because they will also be able to view privately filed cases in which the public is not a party?

A petition for termination of parental rights (TP case type) may be voluntary under §48.41 or involuntary under §48.415. Because many TPR cases are initiated to enable stepparent and infant adoptions, most of these petitions are not filed by a representative of the public interest. We looked at cases recently filed in Dane County to ascertain the percentage of privately filed cases where the DA or corporation counsel was not the petitioning agency. In 2007, the privately filed cases were 64.5% of the TPR caseload; in 2008 they were 69%.

Dane County corporation counsel is requesting access to TPR cases because there may be a TPR action following any CHIPS case. They cite §48.417 as support, arguing that sub. (1) requires the corporation counsel to join cases in which certain conditions apply, and sub. (2) gives the corporation counsel the discretion to join any TPR case. They believe

this creates a duty to review every TPR case filed to see if joining the case is warranted, including the privately files cases.

§48.417 (1) provides that that the representative of the public interest shall file a petition to terminate parental rights under four circumstances: if the child has been placed outside the home for 15 out of the last 22 months, if the child has been abandoned, if the parent has committed homicide against another child, or if the parent has committed great or substantial bodily harm against this child or another child of the same parent. This section by its terms applies only to situations where there is an underlying CHIPS case or the child has been placed out of home by the court. It will not apply to many of the voluntary petitions filed under §48.41. It does not appear to give the corporation counsel or DA the authority to review every TPR case that is filed.<sup>1</sup>

§48.417(2) provides an exception to the requirements sub. (1) by providing that the representative of the public interest need not file a petition under four circumstances: the child is being cared for by a fit and willing relative, the child's permanency plan indicates that termination is not in the child's best interests, the agency responsible for providing services to the family has not done so, and grounds for involuntary termination do not exist. This section specifically excludes any need to intervene in the voluntary TPRs. It does not appear to give the corporation counsel or DA the duty to review every TPR case that is filed.

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<sup>1</sup> 48.417 (1) and (2) provide in pertinent part:

Petition for termination of parental rights; when required.

(1) Filing or joining in petition; when required. Subject to sub. (2), an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official shall join in the petition, if any of the following circumstances apply:

(a) the child has been placed outside of his or her home for 15 of the most recent 22 months....

(b) the child was abandoned when he or she was under one year of age....

(c) A court of competent jurisdiction has found that the parent has committed... [homicide] and that the victim of that violation is a child of the parent....

(d) the parent has committed a violation ... that resulted in great bodily harm ... to the child or another child of the parent....

(2) Filing or joining in petition; when not required. Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d) may apply, an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 need not file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official need not join in the petition, if any of the following circumstances apply:

(a) The child is being cared for by a fit and willing relative of the child.

(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

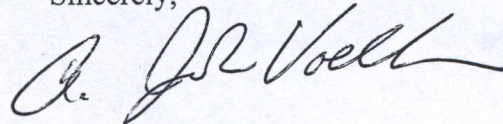
(c) The agency primarily responsible for providing services to the family ... to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

Accordingly, we would like to know whether there is sufficient statutory authority to give corporation counsel and district attorneys access to the restricted site for CHIPS and TPR cases in their own counties.

For further discussion of the legal issues, please contact Marcia Vandercook, 267-7335; for further information about CCAP, please contact Jean Bousquet, 267-0678. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "A. John Voelker". The signature is fluid and cursive, with a long horizontal stroke at the end.

A. John Voelker  
Director of State Courts

cc: Sheryl Gervasi  
Marcia MacKenzie  
Carlo Esqueda