

Common SIJ Issues in State Court

1. Do Michigan state courts have jurisdiction to issue special determinations for SIJ?

Yes, as a “juvenile court” under federal law.

Under 8 U.S.C. § 1101(a)(27)(J), special determinations should be made by a “juvenile court.” Federal law defines “juvenile court” broadly, meaning any court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles. 8 CFR 204.11(a). In Michigan, Probate Courts and Circuit Courts clearly have such jurisdiction under state law. *See* MCL § 712A.2 (b) (Probate Court jurisdiction); MCL § 600.1021(1) (Circuit Court jurisdiction); MCL § 600.611 (Circuit Court ancillary jurisdiction) (“Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.”); *see also In re LFOC*, 319 Mich App 476 (2017) (stating that the family division of Circuit Court “qualifies as a juvenile court under the federal definition”). Once a state court has issued the special determinations, USCIS determines the child’s ultimate eligibility for SIJ classification.

2. Does the grant of a guardianship, custody, or other order regarding the care of a child make the child “dependent” on the state court?

Yes. For SIJ purposes, a child is dependent upon a state court if he/she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 U.S.C. § 1101(a)(27)(J)(i). In other words, a child is dependent on the state court whenever the court legally commits to or places the child under the custody of an agency or department of a State, an individual or an entity. 8 CFR § 204.11(c)(1). In Michigan, dependency could arise in the following types of actions: guardianship (full or temporary), custody, paternity, adoption, divorce, juvenile delinquency, or child protective proceedings.

3. Do state courts grant immigration status under the SIJ framework?

No. Special determinations are factual findings made by the state court based on the evidence presented to that court. The state court is not involved in the ultimate decision of whether to grant immigration status. The federal government (USCIS) will make that decision independently, based on a separate application process. 8 U.S.C. § 1101(a)(27)(J); 8 CFR 204.11(d). Not only do state courts not grant immigration status in SIJ cases, but immigration considerations may not play a role in the state

court's decision whether to issue special determinations in a case. *LFOC* at 486 (“In issuing special determinations, the court is not to engage in an immigration analysis or decision.”).

4. Do state court special determinations (i.e., state court findings of abuse/abandonment/neglect) affect parental rights?

No. A state court is “not required to terminate parental rights to determine that parental reunification is not viable.” 8 CFR 204.11(c)(1)(ii). Moreover, as “parental rights [are] not at issue” in SIJ proceedings, state courts need not require formal charges of abuse, neglect, or abandonment against a parent in order to issue special determinations. *Velasquez*, ___ Mich App at ___; slip op at 10. See also 8 USC 1357(h) (stating that the child “shall not be compelled to contact the alleged abuser . . . at any stage of applying for [SIJ] status”).

5. Are there any special service requirements for motions for special determinations?

No. Motions for special determinations should be filed and served just as you would any other motion in the relevant family court proceeding.

6. Will my minor client lose the opportunity for Voluntary Departure if I pursue SIJ classification on their behalf?

No. Voluntary departure can be forfeited in a few ways, such as when a minor pursues an application for relief in immigration court. A state court petition for guardianship, etc., with a motion for special determinations does not forfeit a minor's ability to seek voluntary departure. Similarly, an application to USCIS for SIJ classification does not forfeit the minor's option to undertake voluntary departure. 8 USC 1229c, 8 CFR § 1240.26.

7. Can I obtain a special determinations order in Michigan after my client has turned 18 years old?

Yes, it is possible—at the judge's discretion. If the state court obtained an adequate factual record before the minor's 18th birthday, state courts have inherent authority to issue the special determinations *nunc pro tunc*. *Freeman v Wayne County Probate Judge*, 230 Mich. 455 (1925) (cited by *Neville v. Neville*, 812 N.W.2d. 816 (Mich. Ct. App. 2012)). See also, *Vioglavich v. Vioglavich*, 113 Mich. App. 376 (1982).

8. Can a state court judge refuse to issue special determinations if the record before the court has established the necessary facts by a preponderance of the evidence?

No. If the record establishes all the facts necessary for the judge to issue the special determinations, the judge is obligated to do so. The court is not permitted to refuse to make the relevant findings when the factual record

establishes the facts necessary for those findings by a preponderance of the evidence. *Velasquez*, ___ Mich App at ___; slip op at 7.

9. Do I have any recourse if a judge refuses to issue the special determinations for my minor client?

Yes. First, you can consider filing a motion for reconsideration (MCR 2.119(F)(3)) with the trial court. You can also appeal the trial court's decision to a state appellate court (MCL 600.308, MCR 5.801).