



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

March 31, 2009

MICHIGAN COURT FORMS COMMITTEE
Minutes of March 5, 2009 Meeting

- Present: Hon. William C. Buhl (chair)
Jon M. Haskell, 8th District Court
Hon. John Holmes, 10th District Court
Cheryl Jarzabkowski, 70th District Court
Kevin McKay, 66th District Court
Porferia Mellado, 6th Circuit Court
Hon. David M. Parrott, 34th District Court
Stacy L. Westra, Kent County Clerk's Office
Jerome Fekin, 3rd Circuit Court, Civil Division
Jill Booth, State Court Administrative Office (staff)
Amy Byrd, State Court Administrative Office (staff)
Jim Inloes, State Court Administrative Office (staff)
Jay Francisco, State Court Administrative Office, JIS (staff)
Traci Gentilozzi, State Court Administrative Office (staff)
Leslie Sauerbrey, State Court Administrative Office (staff)
- Absent: Jeffrey S. Albaugh, 37th Circuit Court
Steve Lockhart, 36th District Court
Mary Hollinrake, 17th Circuit Court
Sidney McBride, 3rd Circuit Court, Criminal Division

Meeting called to order at 9:30 a.m.

Public Comment

Ruth Johnson, Oakland County clerk/register of deeds, discussed identity protection and presented information on an Identity Protection Task Force that has been formed. She requested that social security numbers be removed from certain court forms where the numbers are not required. She also encouraged the committee to somehow shield the social security number on those court forms where the number is required (e.g., use only the last four digits).

Notice of Minor Revisions

The committee agreed that forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office. These forms will be corrected and distributed in June 2009: CC 219b, CC 257, MC 12, MC 13, MC 206, MC 254, MC 270, MC 271, MC 274, MC 281b, and MC 321b.

District Court Forms

1. Verified Pleadings and Declaration Language

The committee considered a request based on last year's discussion to remove the declaration language from certain forms that do not need to be verified pursuant to MCR 2.114. The committee deleted the declaration language from the following forms: CIA 04, DC 102a, DC102b, DC 102c, DC 102d, and DC 103.

Staff Note: During typesetting, several minor revisions were made to these forms (spelling, citations, grammar, punctuation, style, etc.).

The forms were approved as revised.

2. CIA 02, Judgment, Civil Infraction

Committee members considered a suggestion from the SCAO that this form does not accurately reflect the differences between traffic civil infractions and nontraffic state and municipal civil infractions. After much discussion, the committee decided the form does not adequately make the distinction and revised the note to the defendant to say: "**TO DEFENDANT:** If you fail to pay this judgment, the Secretary of State may take action against your driving privileges."

The form was approved as revised.

3. CIA 03, 14-Day Notice, Civil Infraction

The committee discussed a suggestion from the SCAO that this form does not accurately reflect the differences between traffic civil infractions and nontraffic state and municipal civil infractions. Committee members agreed the form does not adequately make the distinction and revised items 1 and 4 to reflect that the action is optional, due to the fact that the action may be inappropriate in state and municipal civil infractions. The committee changed item 1 to say: "the Secretary of State will immediately suspend your driving privileges for most driving offenses." The committee changed item 4 to say: "your operator's license will not be issued or renewed if this notice is for multiple parking violations or a nontraffic state civil infraction."

The form was approved as revised.

4. CIA 06, Order to Show Cause, Civil Infraction

Last year the committee reviewed whether this form meets the minimum requirements of MCR 3.606 and tabled the issue, suggesting an inquiry be republished in 2009. After much discussion, the committee decided that CIA 06 does not meet the requirements of MCR 3.606 and considered whether the form should be deleted. The committee considered how often CIA 06 is used and whether MC 230, Motion and Order to Show Cause, should be used instead because it complies with MCR 3.606 and MCR 2.107(B)(1)(b). Members observed that current practice does not necessarily comply with the court rules, but that an affidavit should be completed. The committee agreed the appropriate form is MC 230 and that CIA 06 should be deleted.

The form was deleted.

5. DC 40, Notice of Seizure of Personal Property Subject to Forfeiture without Process and Order

DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture

DC 42, Application and Ex Parte Order to File Lien on Real Property Subject to Forfeiture

DC 43, Notice of Seizure and Intent to Forfeit and Dispose of Property

DC 44, Order for Return of Property or Discharge of Lien in Forfeiture Proceedings

DC 45, Notice of Intent to Forfeit and Dispose of Property

DC 46, Order Following Forfeiture Proceedings

DC 47, Order of Distribution in Forfeiture Proceedings

The committee considered whether the current case names on these forms should be designed for the underlying criminal case or for the forfeited property because, in situations where the criminal case is no longer pending, the case is brought as a civil case in the name of the forfeited property. After considerable discussion, members decided the case name should remain as is, but that space for reference to the forfeited property be added for use when the criminal case has been closed. Accordingly, the committee inserted a new checkbox option as follows (designated by *):

“ The People of the State of Michigan

* In the Matter of _____”

Staff Note: The Proof of Service on DC 44 will be revised pursuant to the committee’s decision in item 1 of the joint session.

The forms were approved as revised.

6. DC 84, Affidavit and Claim, Small Claims

The committee approved a request from a mediation services coordinator to change item 11 as follows: “I believe the defendant is is not mentally competent” (rather than incompetent). The committee agreed this language will reduce the incidents of plaintiffs misreading the statement.

The committee also responded to a question from a court administrator as to why the defendant needs to be identified as a corporation, partnership, sole proprietorship, or individual in item 5. It had been asserted that this causes confusion for small claims plaintiffs and creates many questions for court clerks. Committee members remarked that, while it is not required, the information is relevant to the different service requirements (corporate status versus individual) and the information is permitted by court rule. Therefore, no change was made.

Staff Note: The Proof of Service will be revised pursuant to the committee's decision in item 1 of the joint session.

The form was approved as revised.

7. DC 102d, Complaint, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause Termination
DC 105a, Judgment, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause Termination

The committee discussed a suggestion from an attorney that these forms apply to persons who rent mobile homes and not just to persons who own mobile homes. The committee pointed out that the forms only apply to persons who own mobile homes because the intent of MCL 600.5779 and MCL 600.5775(2)(f) is to protect the equity interest of mobile home owners. Members concluded the forms comply with the law and should not be changed.

The forms were unchanged.

8. DC 104, Summons, Landlord-Tenant/Land Contract

The committee considered a suggestion from the SCAO to add a use note on the Proof of Service because personal jurisdiction over the defendant must be acquired for money judgments, and substituted service and service by attachment, without court order, are permissible only for possession judgments. Members pointed out the court always investigates questionable service and will not rely solely on the proof when it comes to acquiring personal jurisdiction over the defendant. The committee also remarked that most process servers know personal service is required for a money judgment, and a use note will not prevent dishonest process servers from fraudulently claiming personal service. Therefore, the committee decided not to add a use note.

The form was unchanged.

9. DC 107, Order of Eviction

The committee discussed a request from the Michigan Court Officer, Deputy Sheriff and Process Servers Association to indicate that both personal property and the person(s) are to be removed from the premises. Members concluded there is no statutory obligation in MCL 600.5744 to remove personal property or possessions from the premises. However,

to better reflect the language of the statute, the committee changed the language to say: **“To the Court Officer:** You are ordered to restore the plaintiff to, and put the plaintiff in, full possession of the premises.”

The committee changed the title of the form to “Application and Order of Eviction” because MCR 4.201(L) and MCR 4.202(K) use the term “application.”

Staff Note: Although not discussed by the committee, the SCAO has determined the declaration statement should remain on this form pursuant to MCR 4.201(L)(1)(b) and MCR 4.202(K)(1)(b), which provide that an application for an order of eviction must “be verified by a person having knowledge of the facts stated.” Also, the Proof of Service will be revised pursuant to the committee’s decision in item 1 of the joint session.

The form was approved as revised.

10. DC 118, Complaint and Summons Regarding Dangerous Animal

The committee discussed a request from a court administrator to set off the last statement in item 2 because plaintiffs are not attaching facts in support of their claim(s). Members agreed the directive “attach facts in support of the claim” is difficult to notice on the form and moved the statement to a new item 3 and revised it to say, in boldface type: **“3. Facts in support of the above claim(s) are: (Attach separate document if needed.)”** The remaining items on the form were renumbered accordingly.

The committee also approved a request to include space for the complainant’s telephone number.

Staff Note: The Proof of Service will be revised pursuant to the committee’s decision in item 1 of the joint session.

The form was approved as revised.

11. DC 225, Complaint, Misdemeanor

The committee considered a suggestion from a judge to combine the Complaint and Warrant on one page, but concluded this is improper because each serves a different legal purpose.

The committee discussed a request from the SCAO to review the form for compliance with MCL 764.1b, and members concluded the language is sufficient.

The form was unchanged.

12. New Form, Affidavit and Counterclaim, Small Claims

Last year the committee reviewed a draft of this form and requested further changes be published for discussion in 2009. During its discussion, the committee noted that MCL

600.8423 says a plaintiff “may commence an action against the plaintiff in a court of competent jurisdiction and file with the clerk or deputy clerk of the small claims division wherein the plaintiff has commenced his action, at or before the time set for the trial of the small claims action, an affidavit in a form prescribed by the supreme court ...” (emphasis added). Based on this language, the committee concluded the SCAO is not required to develop the form because the statute uses the term “may,” and because the statute says “in a form” and not “on a form.” Committee members pointed out the form for an affidavit is set forth in MCR 2.119(B). Therefore, the committee decided not to recommend a form for approval.

Circuit and District Court Forms

1. Proof of Service Fees

The committee considered a request from the Michigan Court Officer, Deputy Sheriff and Process Servers Association to provide more detail regarding service fees to better reflect the provisions in MCL 600.2559. Some committee members noted that if a judge wants a detailed breakdown of fees, the judge will request it and that process servers have invoices for this purpose. Other committee members noted that honesty is an issue with some process servers, and more detailed fee information would help the courts itemize and keep better track of the claimed fees. The committee considered changing just one form at this time (as a test), but decided this would not be practical. The committee discussed whether the forms should request an attached itemization of fees (separate sheet of paper) but concluded it would be problematic to enforce.

After much discussion, the committee concluded that all the forms with a Proof of Service should be revised to include fields for the incorrect address, but that the changes be made only when an affected form is being revised for another purpose.

The Proof of Service will be revised as follows:

Service fee \$	Miles traveled and fee \$	
Incorrect address \$	Miles traveled and fee \$	TOTAL FEE \$

2. Verified Pleadings and Declaration Language

The committee considered a request based on last year’s discussion to remove the declaration language from certain forms that do not need to be verified pursuant to MCR 2.114. The committee deleted the declaration language from the following forms: MC 01b, MC 35, MC 72, MC 221, MC 222, MC 258, MC 321b, MC 501, and MC 503.

The committee also agreed to remove the social security number from MC 221 because

of identity theft concerns and the fact that the information is not required.

The forms were approved as revised.

3. Clerk of the Court, Deputy Clerk of the Court, and Court Clerk

Last year the committee discussed the inconsistent use of “clerk of the court,” “deputy clerk of the court,” “deputy clerk,” and “court clerk” beneath the signature lines on court forms, and considered whether a single standard could be applied. The SCAO agreed to identify and create a list of forms for the committee’s consideration that contain a “clerk of the court” signature line. However, due to the large number of recently-revised forms, the fact that this would also affect a large number of forms with no significant benefit, and the fact that some of these differences are intentional, the committee suggested the item be removed from the agenda and further discussion be tabled indefinitely.

4. E-mail Addresses

The committee discussed a general request from the Michigan Court Officer, Deputy Sheriff and Process Servers Association to include the plaintiff’s e-mail address in the case title of all forms that require the Proof of Service. Members denied the request because there is no statutory or court rule authority for an e-mail address in the case name and SCAO-Approved forms typically do not include fields that have not been mandated by statute or court rule. The committee remarked that including this field would imply that the e-mail address is mandated, when it is not. Committee members also noted that e-mail addresses can be easily obtained from the *Bar Journal* and the attorney directory on the State Bar of Michigan website.

5. MC 02, Appearance

The committee considered a request from a court administrator to add a field for the attorney’s e-mail address for those lawyers who stipulate that court notices can be sent to them electronically. Committee members remarked it is the attorney’s responsibility to obtain e-mail addresses and that an e-mail address should not be requested on the form because the information is not mandated by statute or court rule.

The form was unchanged.

6. MC 06, Notice to Appear

The committee discussed a request from a court administrator to develop a Notice to Appear that is geared more toward civil cases or, in the alternative, to modify the current Notice to Appear to allow for civil matters. The committee decided it is unnecessary to revise the form because the proceedings currently listed are sufficient. The committee pointed out that items for civil proceedings are already listed on the form. SCAO staff also remarked that the blank option can be expanded from one to many fields by the case management system provided to accommodate multiple selections not already preprinted on the form.

The form was unchanged.

7. MC 07, Default Request, Affidavit, and Entry
MC 07a, Default Request, Affidavit, Entry and Judgment (Sum Certain)

The committee considered a request from the Michigan Creditors Bar Association to remove item 4 on MC 07 and item 5 on MC 07a because MCR 2.603 no longer requires written instruments to be filed with the court. Members agreed the statements should be removed from both forms in light of the court rule change to avoid misinterpretation by court staff.

The forms were approved as revised.

8. MC 13, Request and Writ for Garnishment (NonPeriodic)
MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit)

The committee considered a suggestion from the SCAO that these forms do not comply with court rule requirements regarding signing. The committee discussed whether a writ of garnishment filed by a corporation needs to be signed by an attorney, whether the writ only needs to be signed by someone with knowledge of the facts, or whether both signatures (attorney and someone with knowledge of facts) are required. After much discussion, the committee concluded that the Request must be signed by an attorney for a corporation and the agent cannot sign for the plaintiff if it is a corporation. Members also agreed that one line is adequate for the "Plaintiff/Agent/Attorney signature." The committee pointed out this may be a training issue for the courts.

Committee members also considered a request from a county clerk/register of deeds that social security numbers be removed or somehow blocked to help alleviate identity theft concerns. The committee agreed that identity theft is a legitimate concern, and decided the forms should be separated into two parts: Part 1 will not include the social security number and Part 2 will include the social security number. The distribution on MC 13 will be changed to say: "Original – Court (Part 1), 1st copy – Garnishee (Part 2), 2nd copy – Defendant (Part 2), 3rd copy – Return (proof of service) (Part 1), 4th copy – Plaintiff/Attorney (proof) (Part 2)." The distribution on MC 52 will be changed to say: "Original – Court (Part 1), 1st copy – State Treasurer (Part 2), 2nd copy – Defendant (Part 2), 3rd copy – Return (proof of service) (Part 1), 4th copy – Plaintiff/Attorney (proof) (Part 2)." In addition, the committee agreed that MC 12 and MC 50 should be changed in the same manner because these forms also include social security numbers.

The committee approved a correction on page three of MC 13 under "Examples of Income Exempt from Garnishment." The citation in the first bullet, Individual Retirement Account, was changed to MCL 600. 6023(1)(k).

Committee members also agreed to revise the Proof of Service pursuant to the committee's decision in item 1 of the joint session.

The forms were approved as revised.

9. MC 14, Garnishee Disclosure

The committee considered a request from the public that item 5b include the directive “Enter 0 if negative” to avoid withholding an amount less than zero by mistake. The committee agreed a directive would be helpful, and modified the suggested language to say: “If the amount is less than zero, enter -0-.”

The form was approved as revised.

10. MC 17, Certificate of Satisfied Judgment

The committee discussed a request from an attorney that this form be expanded to include other orders, including discharge of lien and lis pendens. The committee declined to make the change, finding it impractical and unnecessary.

Committee members considered a suggestion from a civil clerk to combine the form with MC 50, Garnishment Release. It had been asserted that many garnishments are released due to a judgment being satisfied and it would be more efficient to release a garnishment simultaneously with the satisfaction of judgment. After discussing the different procedures, members decided it is impractical to combine the forms, primarily because the plaintiff in the garnishment proceeding may not be the plaintiff in the underlying civil case.

The committee discussed a suggestion from a civil clerk to change the statement, “The judgment has been paid in full to the court on _____” to “The judgment has been paid in full.” The committee denied the request because MCR 2.620(2) permits the current language.

The form was unchanged.

11. MC 19, Request and Order to Seize Property

The committee considered a request from the Michigan Court Officer, Deputy Sheriff and Process Servers Association that the checkbox in item 4 of the Order be deleted and the language be changed to reflect that the proceeds of sale should be deposited with the plaintiff, unless otherwise ordered by the court. Members agreed that proceeds can be deposited either with the plaintiff or the court and that plaintiffs might inappropriately check the box in front of item 4, when the court itself should be checking the box. Therefore, the committee decided to delete the checkbox preceding item 4 and revised the language to say: “Deposit proceeds of sale with the plaintiff court after deducting statutory fees and statutory expenses.”

The committee also discussed a suggestion from the Michigan Court Officer, Deputy Sheriff and Process Servers Association that the language in item 6 be changed to: “Unless earlier satisfied in full or in part, you must return this order not less than 20 days, nor more than 90 days, from the effective date.” Members responded that the 20-day

minimum in MCL 600.6002 is the current law and the language should not be changed.

The committee agreed that MCR 2.621 does not generally apply to this form and, therefore, removed the declaration statement.

The form was approved as revised.

12. MC 39, Judgment, Claim and Delivery

The committee discussed whether the line for costs was inadvertently removed from the form last year. The committee agreed and reinserted the line as follows: “Costs: filing \$ _____ jury \$ _____ motion \$ _____ service \$ _____.”

The form was approved as revised.

13. MC 50, Garnishment Release

The committee addressed concerns regarding who should serve this document, specifically: (1) must the court sign the Certificate of Mailing and send copies to the garnishee, the defendant, and the plaintiff? (2) can the court leave the Certificate of Mailing blank and return all copies to the plaintiff for service? Committee members concluded the clerk should serve the document because this eliminates any doubt that the garnishee has been served. Members agreed the form was originally intended as a document prepared by the court based on some action by the plaintiff or the court itself.

The committee discussed a suggestion from a legal intern that the “as of” language on the form is unclear as to what happens with funds that have been withheld as of the release date and that any money withheld before that date and not yet sent to the plaintiff must be given to the defendant. Members agreed and changed the language to say: “Any

amounts withheld on by the garnishee or after _____ shall be returned to the
Date
defendant and any further withholdings shall be discontinued.” The committee also decided to place a number 4 in front of this item (see details below).

The committee considered a request from the public to relocate the defendant’s social security number on the form so it is not near the address (for those courts that use window envelopes for mailings). Based on the previous discussion of MC 12 and MC 13, the form will become two parts: Part 1 is the original for the court and will not include the social security number; Part 2 is for the parties and the garnishee defendant and will include the social security number. Accordingly, the distribution at the top of the form will be changed to: “Original – Court (Part 1), 1st copy – Garnishee (Part 2), 2nd copy – Defendant (Part 2), 3rd copy – Plaintiff (Part 2).”

In light of the foregoing changes, the committee reviewed the form’s overall design and made the following revisions:

TO THE GARNISHEE:

- 1. The garnishment issued on _____ is withdrawn by the plaintiff.
Date
The withdrawal was authorized on _____ by _____.
Date Plaintiff/Attorney Bar no.
- 2. The garnishment issued on _____ is cancelled by the court.
Date
- 3. You are released from further liability in connection with this garnishment.
- 4. Any amounts withheld by the garnishee on or after _____
Date
shall be returned to the defendant and any further withholdings shall be discontinued.

Staff Note: The Certificate of Mailing on the form was revised to comply with the standard.

The form was approved as revised.

14. MC 203, Writ of Habeas Corpus

Last year the committee tabled discussion of several issues, including: (1) the purpose of the Notice to Prosecuting Attorney, (2) how the form is actually used, and (3) whether the form should be redesigned. The committee was informed that the Notice has been on the form since it was developed in 1981 and that, when MCR 3.303 was amended in 1985, the form was revised accordingly to require notice to the prosecuting attorney in certain instances. Also, committee members pointed out that MCR 3.303(L)(2) provides the prisoner may not be discharged “until sufficient notice of the time and place of the hearing is given to the prosecuting attorney of the county within which the prisoner is detained” Taking these factors into consideration, the committee decided the Notice should remain and the form should not be redesigned.

During discussion, some committee members noted this form is being required for video arraignments and questioned whether a writ is the appropriate form for this purpose. The committee agreed a writ is inappropriate for video arraignments. Kevin McKay and Cheryl Jarzabkowski volunteered to draft an order to appear that will allow prisoners to attend video arraignments in a more efficient manner pursuant to MCR 6.006.

The form was unchanged.

15. MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment

The committee discussed a suggestion from a court administrator that the form is confusing because it distinguishes between defendant, parent, surety, and other depositor in the Notice section and the assertion that anyone, other than the defendant, who deposits bond is a “surety.” Currently, the show-cause language in the Order only refers to the surety. The committee discussed the definition of surety and concluded that it should not define surety for the trial courts. Accordingly, the committee decided the

language in the Order should not be clarified because the form is designed so that a court can interpret the term as it deems appropriate.

The committee also addressed a suggestion from a court administrator to add a line for the time of the hearing. The committee noted a line for both the date and time of the hearing is already on the current version of the form.

The form was unchanged.

16. MC 219, Judgment of Sentence

The committee discussed a suggestion from the SCAO to remove the word “Licensing” from item 4 because the citation to MCL 257.625(20)(b) on page two refers to 257.625n and 257.904d, which do not involve licensing sanctions. The committee agreed and deleted the word “Licensing” from item 4, finding it inapplicable in certain situations. As a result of this change, the committee pluralized the word “Sanction” (“Sanctions”) in item 4.

The committee approved a suggestion from the SCAO to revise the statement on page two to better reflect the applicable statutes. The committee changed the language to: “Sanctions are reportable to the State Police pursuant to:

- MCL 333.7408a(11) and MCL 333.7408a(12)(b), including sentences for imprisonment under 90 days
- MCL 257.625(21)(b).”

The form was approved as revised.

17. MC 222, Petition and Order for Court Appointed Attorney

The committee discussed a request from the 3rd Circuit Court to add a field for obtaining a financial background report on a defendant who is requesting court-appointed counsel. Members decided that authorization to obtain a financial background report would be more appropriate on MC 287, Financial Statement (see agenda item 27 below).

The form was unchanged.

18. MC 227, Application to Set Aside Conviction

Pursuant to a request from the Attorney General’s Office and the Michigan State Police, the committee removed personal service from the Proof of Service and deleted the language “or by leaving it at his/her office” and “or by leaving them at the department.” Committee members also added the standard language “addressed to the last-known address.” The committee agreed that, on the Instructions page, the language “or deliver” should be deleted from items 7 and 9, and “mailed or delivered” in item 10 should be replaced with “served.”

The committee also updated the Michigan State Police address in item 10 to: Michigan

State Police, Criminal Records Division, 106 W. Allegan, Lansing, Michigan 48933.

The form was approved as revised.

19. MC 230, Motion and Order to Show Cause

The committee discussed a suggestion from an attorney that the Motion and Affidavit does not comply with the form of an affidavit pursuant to MCR 2.119(B) because there is no reference to “personal knowledge” and “competent to testify.” The committee agreed the current language does not accurately reflect the court rule and added a new item 4 in the Motion and Affidavit that says: “This affidavit is made on my personal knowledge and, if sworn as a witness, I can testify competently to the facts in this motion and affidavit.” As a result of this change, items 4, 5, and 6 in the Order were renumbered accordingly.

In light of the above change, the committee also decided to revise the parenthetical statement in item 2 to say: “(State with particularity admissible facts establishing or denying this motion.)”

Committee members agreed the above revision should be made on other SCAO-Approved forms that contain an affidavit. The SCAO will identify those forms that may be affected and distribute them to the committee for its review in 2010.

Committee members agreed to revise the Proof of Service pursuant to the committee’s decision in item 1 of the joint session.

The form was approved as revised.

20. MC 235, Motion and Order for Destruction of Fingerprints and Arrest Card

The committee reconsidered the effect of *McElroy v. Michigan State Police* on this form based on further communication from attorney DeNault, a memorandum setting forth the position of the Attorney General’s Office, a meeting between the SCAO and the Michigan State Police, and comments from the State Bar of Michigan. The committee reviewed Mr. DeNault’s argument that fingerprints may not be destroyed unless they are the result of a finding of not guilty and, therefore, the second option in item 1 should be deleted from the form.

The committee noted that MCL 28.243(12)(h) could also allow for dismissal of a case because a person should not have been charged in the first place and there is no basis for the case. In this instance, if the Michigan State Police has not already destroyed the fingerprints, the court could order them destroyed by using MC 235. Mr. DeNault’s letter agreed with this viewpoint. However, Mr. DeNault suggested this should not be accomplished through MC 235 but rather through a more thoroughly prepared motion. Instead, he suggested that MC 235 should be used only for those situations where the local arresting agency or Michigan State Police have failed to destroy the fingerprints after a finding of not guilty has been made, as clearly stated in MCL 28.243. The

committee agreed with this reasoning and suggested the form be redesigned so the Motion and Order are separate forms. Accordingly, the SCAO will typeset the Order and distribute it to the committee for its review.

A Notice of Hearing will also be added to the Motion and will include fields for (1) the date of hearing and (2) the judge's signature and bar number. The committee agreed a standard Certificate of Mailing should also be added to the form.

In addition to separating the Motion and Order, the committee agreed to revise the language on MC 235 as follows:

- (1) delete the second checkbox in item 1 and add the language: "I was found not to be within the provisions of MCL 712A.2."
- (2) incorporate the exceptions of MCL 28.243(9)(a)-(f) in item 2.
- (3) include language in the use note that says: "This form is not for use in conjunction with setting aside an adjudication pursuant to MCL 712A.18e or setting aside a conviction pursuant to MCL 780.621."

Staff Note: MC 262 and MC 263 must also be revised to reflect the changes to MC 235. The SCAO will make the appropriate revisions to these forms and distribute them for review with the forms revised at this meeting.

The form was approved as revised.

21. MC 238, Judgment after Bond Forfeiture

The committee considered a request from a court administrator to revise the note regarding payment of bail (designated on the form with an *). Members agreed the form is misleading and implies that bail bondsmen are liable for terms and conditions of release other than appearance. The committee decided the form should distinguish between the liability for surety bondsmen and third parties who post bond and approved the following language: "If a 10% bond is allowed by the court and a surety bond for one quarter of the full bail amount has been posted by a surety pursuant to MCL 765.6(2), judgment against the surety is limited to that one quarter. The remaining three quarters of the full bail amount plus costs are the responsibility of the defendant/parent, less the amount of cash deposited."

The form was approved as revised.

22. MC 241, Bond

The committee considered a request from the 36th District Court to revise the "Terms and Conditions" section to allow a third party to post bond as though the defendant posted it so the court may use the bond toward payment pursuant to MCR 6.106(I)(3). Members concluded there is no authority for this change.

The committee also considered a suggestion from an attorney to revise the form to comply with a September 2007 amendment to MCR 6.106, which provides that if a

defendant violates a condition of bond, other than appearance, the court may enter a judgment against the surety. Members noted the court rule provision does not need to be on this form because it is not part of the bond conditions and the form is not used to inform people what happens if bond conditions are not met. Therefore, the committee decided this revision is unnecessary.

The form was unchanged.

23. MC 246, Motion, Affidavit and Summons Regarding Probation Violation

The committee discussed a suggestion from the SCAO that this form be reviewed, primarily because the jurat was inadvertently left on the form as changes were made over the years. The committee was advised of the form's history and, in particular, that a decision was made in 2004 that MC 229 should be used for issuing a bench warrant, while MC 246 should be used for issuing a summons; however, when this decision was made, the committee did not address whether issuing a summons is regulated by MCR 3.606, so the notary was left on the form.

The committee considered whether MCR 3.606 applies to probation violations in regard to show cause because it is the probation officer's responsibility to prove to the court that a violation occurred. The committee observed that MCR 3.606 is not the appropriate rule for issuing a summons after a finding of probable cause and agreed with the following SCAO analysis: (1) based on statute and case law, MCR 3.606 does apply to the issuance of a bench warrant in probation violation proceedings and MC 229 should continue to be used, (2) MCR 3.606 does not apply to the issuance of a summons and, therefore, the court rule citation and jurat should be removed from the form, and (3) the declaration language should be removed because the probation officer's motion does not need to be verified pursuant to MCR 2.114.

Accordingly, the committee made the following revisions:

- (1) changed the title of the form to "Motion and Summons Regarding Probation Violation."
- (2) inserted a field for the "Date" next to the probation officer's signature.
- (3) removed the jurat.
- (4) removed the declaration statement because the probation officer's motion does not need to be verified pursuant to MCR 2.114.
- (5) removed the court rule citation from the foot of the form.

The form was approved as revised.

24. MC 273, Personal Service on Prisoner and Affidavit

The committee discussed a request from an attorney to change the form because of a perceived need to have the warden complete the proof of service even though a prisoner has acknowledged service. This results in the need for a notarized Proof of Service, for which prisoners are being charged.

The committee discussed the interpretation of MCR 2.103(C) in regard to service on prisoners and agreed that MCR 2.104 does not require the proof from the warden if the prisoner acknowledges service. To make this clearer, the committee added an instruction on the Request that says: "Upon service, you must either complete the affidavit of service below or have the prisoner complete the acknowledgment of service below. ...". The committee also added a use note on the Affidavit of Service that says: "**NOTE:** This affidavit is prepared only when the prisoner does not acknowledge service."

The committee also considered how service is effectuated. Members agreed that the prisoner should sign the acknowledgment of service and not someone on his or her behalf. Therefore, the committee changed the caption under the signature line on the Acknowledgment of Service to "Prisoner signature," and deleted the language "on behalf of _____."

The form was approved as revised.

25. MC 283, Order for DNA Sample

The committee discussed a request from the Michigan State Police (MSP) to revise this form because the MSP is having problems matching samples with cases in those instances where a sample is not required because it has already been taken. The committee approved the proposed revisions and added the following checkbox option on the Certification and Return: "I certify and return that a DNA sample of the defendant/juvenile was taken and forwarded to the Department of State Police as ordered above. was not taken because the Department of State Police already has a sample of the defendant/juvenile."

Staff Note: To comply with standards, SCAO staff made the following additional changes: (1) changed "under MCL 750.520m" in the sentence at the bottom of the form to "pursuant to MCL 750.520m," and (2) capitalized the "s" in the "sentence date" line of item 3.

The form was approved as revised.

26. MC 284, Binding Arbitration Award

The committee reviewed a suggestion that was tabled from last year to design the field for judgment interest in the same manner as MC 10, Judgment. The committee agreed and made the change.

The committee removed "Judicial District" from the masthead on all three pages of the form because the form is not used in district courts.

The form was approved as revised.

27. MC 287, Financial Statement

The committee approved a request from a court administrator to add a field for the defendant's e-mail address because debt collectors are now using e-mail and text messaging in addition to telephone contact.

Based on the discussion in agenda item 17, the committee added a financial authorization statement that would allow the court to obtain a credit report on the person completing the form. To make space on the form, two lines were removed from "Bank/Financial account no."

The form was approved as revised.

28. MC 304, Order Regarding Alternate Service

The committee discussed a request from a court administrator to expand the use of this form pursuant to MCR 2.107(B)(1)(b) and made the following changes:

(1) item 1 – added checkbox options for " MCR 2.105" and " MCR 2.107(B)(1)(b)."

(2) item 2 – added checkbox options for " summons and complaint" and " other: _____."

(3) item 2 – changed "may be made ..." to "shall be made"

(4) revised the Proof of Service pursuant to the committee's decision in item 1 of the joint session.

After further review, the committee referred the above changes to the Michigan Court Forms Committee, Probate Section for discussion in September 2009. Therefore, the form will be placed on the Probate Section agenda for discussion in the fall and will then be distributed to the Circuit and District Section for its review in 2010.

29. MC 307, Order for Service by Publication/Posting and Notice of Action

The committee approved a request from a legal assistant to remove the word "attached" from the first line on the Affidavit of Mailing because the summons and complaint are not attached to the order and, therefore, the language is unnecessary.

In light of the foregoing decision, the committee also replaced "attached copy" with "order for service" in the Affidavit of Publishing as follows: "The order for service was published in this newspaper at least once each week for three consecutive weeks on these dates: _____." The committee reasoned that "order for service" more clearly defines what should be published.

The form was approved as revised.

30. New Form, Renewal of Civil Judgment

The committee reviewed a draft of an affidavit to enforce judgment pursuant to MCL 600.5809, along with suggestions from the Michigan Creditors Bar Association. After

considerable discussion about procedure and the various mechanisms for renewing civil judgments, the committee agreed to only develop an ex parte motion and order.

The draft was redesigned as follows:

MOTION

1. A money judgment was entered in this action on _____ in the amount of \$ _____, including costs and interest.
Date
2. A payment in the amount of \$ _____ was received by the plaintiff on _____, which was the last payment received.
Date
- No payments have been received on this judgment.
3. **I REQUEST** the judgment be renewed.

Date

Signature of plaintiff

Address

City State Zip

Telephone number

Staff Note: The SCAO has determined that, because the person signing the motion may not be the plaintiff but rather someone who purchased the judgment, the motion should say "petitioner" instead of "plaintiff."

IT IS ORDERED:

4. The motion is granted. denied.

Date

Judge Bar no.

Committee members agreed neither a jurat nor a declaration is required on the form.

The committee also added a Certificate of Mailing to the form and the cite to MCL 600.5809.

The new form was approved as revised.

31. New Form, Order Allowing Alternate Court Officer to Seize Property

The committee denied a request from the Michigan Court Officer, Deputy Sheriff and Process Servers Association to develop an ex parte order to temporarily appoint court

officers who are seizing property in a county other than the one to which he or she is officially appointed. The committee concluded the form is unnecessary.

32. New Form, Answer, Landlord-Tenant Proceedings

The committee discussed a request from Street Democracy to develop an answer for landlord-tenant proceedings involving rental property (except land contracts). The committee decided the form is unnecessary and may inappropriately constitute legal advice.

33. New Form, Order Cancelling Wage Assignment

The committee approved a request from the SCAO to develop a standard order to notify employers that a debt has been satisfied and/or voluntary payments are being made. The committee approved the draft that was provided, with the following revisions:

- (1) apply the normal standards for an MC form, such as distribution and masthead (including plaintiff versus defendant case name).
- (2) change item 3 to say: "Wage assignment is no longer necessary."

The new form was approved as revised.

Circuit Court Forms

1. Verified Pleadings and Declaration Language

The committee considered a request based on last year's discussion to remove the declaration language from certain forms that do not need to be verified pursuant to MCR 2.114. The committee deleted the declaration language from the following forms: CC 375, CC 375M, CC 377, CC 377M, CC 378, and CC 379.

The committee also applied standard language to the Proofs of Service on these forms and revised the Proofs of Service pursuant to the committee's decision in item 1 of the joint session.

The forms were approved as revised.

2. CC 265, Notice of Right to Appellate Review and Request for Appointment of Attorney

The committee considered a suggestion from the Appellate Defender Commission to include on the form the language from MCR 6.425(F)(4). The committee decided the general language on the form incorporates the specific language used in the court rule and, therefore, the form does not need to be modified.

The committee also agreed to remove the statement, "I understand that I may be required to contribute to the cost of providing my attorney" from the second page of the form. because there is no authority for it. This language comes from MCR 6.005, which applies only to appointment of counsel in trial court cases, not appointment of appellate

counsel.

The form was approved as revised.

3. CC 376, Personal Protection Order (Domestic Relationship)

The committee discussed a suggestion from the SCAO to include a use note that says: “**NOTE:** The information in item D is about the respondent, not the petitioner.” This language was added to the on-line version of the form, and the committee agreed a similar instruction would be helpful on the paper version of the form. However, because there is no space for it, the committee added bold lines around the entitlement box for the respondent and the identifying information for LEIN to make it clearer this information pertains to the respondent.

Committee members also agreed to revise the Proof of Service pursuant to the committee’s decision in item 1 of the joint session.

Staff Note: Based on standards, the word “Age” in the field for “Date of birth or age” has been made lower case because it is not the first word in the item.

The form was approved as revised.

4. CC 381, Notice of Hearing on Petition for Personal Protection Order

The committee approved a request from the SCAO to revise the language following “TO THE PETITIONER” to comply with MCR 3.705(B)(1) because the court rule became applicable to minors in 2002, and the form should have been revised at that time. The committee changed the language to: “**TO THE PETITIONER:** You should serve this notice no later than 5 days before the date of the hearing stated above so that the respondent receives notices at least 1 day before the hearing. See the other side for proof of service. If the respondent is under 18 years of age, you must also serve the parents, guardians, or custodians of the respondent.”

The form was approved as revised.

5. CC 387, Order Vacating Conviction and Entering New Disposition

The committee discussed development of this form to comply with 769.16a, as required by statute (effective January 13, 2009) and approved the draft that was provided.

The committee deleted the citation MCL 770.16 from the foot of the form.

The new form was approved as revised.

6. New Form, Order for Admission to State Bar of Michigan

The committee denied a request from the State Bar of Michigan to develop a standard

order for circuit courts to use when admitting attorneys to the bar. It had been asserted that a standard order will help reduce the incidents of newly-admitted attorneys practicing law in Michigan before they are formally admitted to the bar (i.e., before they register with the State Bar and pay their dues). Rather than developing a court form, the committee suggested that information on admitting attorneys to the bar be included in the *Michigan Court Administration Reference Guide*. The committee also suggested a “Best Practices” guideline for the trial courts.

Meeting adjourned, 4:15 p.m.

Respectfully submitted,

Traci R. Gentilozzi