



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

February 21, 2010

TO: Michigan Court Forms Committee (Circuit and District representatives only)

FROM: Traci R. Gentilozzi, Forms and Manuals Analyst

RE: Agenda and Materials for **March 4, 2010 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is the agenda for the March 4, 2010 meeting of the Circuit and District Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 West Ottawa. A map and directions are provided.

Although documentation is provided with the agenda, it would be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

Notice of Minor Revisions

Forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office and provided with the agenda materials, but do not require discussion or approval by the committee. Any of these forms will be discussed if members raise substantive issues or if also included in the agenda for other purposes. These forms will be corrected and distributed in June 2010: CC 219b, MC 392, and DC 91.

Circuit Session – 9:30 a.m. – 11:30 a.m.

1. PC 110, Petition and Ex Parte Order for Transport and/or Temporary Detention

The Probate Section of the Michigan Court Forms Committee approved minor revisions to this form in September 2009. Because the form is filed with the circuit court, the Circuit and District Section should review the form before it is distributed to the courts.

Both the 6/98 and 9/09 versions of the form are provided. The changes approved by the Probate Section are marked on the 9/09 version with an asterisk (*).

2. CC 79, Claim of Appeal on Denial of Application for Concealed Weapon License

A chief deputy court clerk has suggested that the appeal deadlines listed in MCR 7.101, *et seq.* be included on the instruction page because the applicable statute is silent in this regard. Should this information be added to the form?

3. CC 257, Motion for Relief from Judgment

“To be completed by the court” should be removed from the proof of service to comply with a 2006 amendment to MCR 6.503. Also, should MCR 6.503 be added to the bottom of the form?

4. CC 268, Order Regarding Driver’s License Restoration

A court has questioned whether item 6 should be clarified to say (new language underlined): “This order shall be void and without effect if a certified copy of this order is not served by the petitioner on the Secretary of State, Driver Assessment and Appeal Division,” The petitioner is responsible for service under MCR 2.602(D). However, unrepresented petitioners are unaware of this requirement.

5. CC 298, Application for Leave to Appeal and Notice of Hearing

The motion and affidavit on this form should be reviewed for compliance with the committee’s 2009 decision to revise the standard affidavit language. Last year the committee modified MC 230, Motion to Show Cause, to comply with the form of an affidavit pursuant to MCR 2.119(B). The committee changed the affidavit language to say, “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.” See the meeting minutes. Committee members agreed this change should be made on all SCAO-approved forms that contain an affidavit.

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

A court employee has requested that “ other: _____” be added to item 5, similar to item 5 on CC 375, Petition for Personal Protection Order (Domestic Relationship).

7. CC 379, Motion to Modify, Extend, or Terminate Personal Protection Order

It has been suggested that the “For Court Use Only” portion of the form be reviewed for appropriateness. This provision may be inaccurate because it permits a judge to grant a petitioner’s motion to terminate a personal protection order without a hearing.

The “For Court Use Only” provision has been on the form since 1995. That version of the form said: “ Motion for termination granted. Removal of Entry from LEIN (Form MC 239) issued” and no reference was made to the motion being granted “without a hearing.” In 1997, the current language regarding “without a hearing” was added to the form. It was intended for the judge to use only in those instances where it was deemed appropriate and/or necessary. When MCR 3.707 was adopted, the provision probably should have been removed from the form. In light of MCR 3.707(A)(2), should the provision be deleted?

8. CC 382, Motion and Order to Show Cause for Violating Valid Personal/Foreign Protection Order

The motion and affidavit on this form should be reviewed to determine whether it complies with the committee’s 2009 decision to revise the standard affidavit language. Last year the committee modified MC 230, Motion to Show Cause, to comply with the form of an affidavit pursuant to MCR 2.119(B). The committee changed the affidavit language to say, “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.” See the meeting minutes. Committee members agreed this change should be made on all SCAO-approved forms that contain an affidavit.

Last year the committee approved a standard proof of service fee box and decided that it should be applied to all MC, CC, and DC forms with a proof of service. The committee agreed that affected forms should be modified when the forms are being revised for another purpose, rather than revising all the affected forms at one time. See the meeting minutes. Accordingly, the standard proof of service box will be applied to CC 382.

9. CC 383, Order Denying or Dismissing Petition for Personal Protection Order

A judge has requested that item 4a allow for the dismissal of a petition for a personal protection order with the following checkbox options: “ no parties appeared” and “ does not meet statutory requirements.” The SCAO believes the current language on the form complies with MCR 3.705(A)(5) and MCR 3.705(B)(1) and (6). A draft is provided. Should the checkbox options be added?

10. CC 385, Order on Motion to Modify, Extend, or Terminate Personal Protection Order

A judge has suggested that findings for termination be added to the form where appropriate. A draft is provided.

Joint Session - Circuit and District - 11:30 a.m. – Noon

1. Motion and Affidavit

Last year the committee revised MC 230, Motion to Show Cause, to comply with the

form of an affidavit pursuant to MCR 2.119(B). The committee revised the affidavit language to say, "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." See the meeting minutes. Committee members agreed this change should be made on all SCAO-approved forms that contain an affidavit. Accordingly, the affidavits on the following forms should be reviewed for possible changes: MC 07, MC 07a, MC 20, MC 24, MC 62, MC 210, MC 229, MC 231, and MC 416.

A question has arisen concerning affidavits, deputy clerks, and notarization, specifically regarding MC 229, Motion, Affidavit, and Bench Warrant. MC 229 requires that the agent's signature be notarized. But some clerks have indicated they cannot notarize the signatures because, at a seminar they attended, they were told they can sign as deputy clerks but cannot notarize documents filed in the clerk's office. Unlike other forms (such as MC 210), MC 229 does not have "Notary public/Deputy court clerk" underneath the signature line. The SCAO believes that, while it is true this section of the form can be completed by a notary, it can also be completed by a deputy court clerk because they are authorized to take oaths and it would make more sense for them to complete it in their capacity as a deputy court clerk than as a notary. The absence of the "Notary public/Deputy court clerk" language does not take away this authority. The committee is asked to consider whether deputy clerks can notarize the agent's signature and, if so, whether it is necessary for the signature line on MC 229 (and other affected forms) to say "Notary public/Deputy court clerk"?

2. Postcard Design and Compliance with MCR 1.109

A court administrator has asked the committee to provide its opinion on the application of MCR 1.109 in conjunction with MCR 2.102(E), MCR 2.502(B), and MCR 2.603(A)(1) to the redesign of certain MC forms by making them postcards. Specifically, the following questions have been asked: (1) Does MCR 1.109 preclude papers smaller than 8 ½ x 11 from being filed with the court? (2) Are notices and orders filed with the court? (3) Does the court rule only apply to papers filed by litigants?

Depending on the committee's answers to these questions, the court has questioned whether it's proper to redesign the following forms.

- (1) Is it appropriate to redesign MC 07, Default Request, Affidavit, and Entry, as a postcard since the default entry can be entered by the clerk without the request of a party?
- (2) Is it appropriate to split MC 09a, Dismissal, Nonservice/No Progress, so the nonservice dismissal remains an order with a signature line, but as a postcard? Can the dismissal for no progress be redesigned as a separate postcard since an order may not be required pursuant to MCR 2.502(B)? The signature would be replaced with a name so the clerk's name can be preprinted.
- (3) Can MC 26, Notice of Intent to Dismiss for No Progress, be redesigned as a postcard and the signature replaced with a preprinted name since the notice does not need to be placed in the case file and only requires a register of actions entry?

3. MC 01, Summons and Complaint

The Michigan Creditors Bar Association (MCBA) encourages court officers and process servers to include a physical description of the party they serve. According to the MCBA, this helps identify the party served and aids the court in situations where service is challenged. In light of this, it has been suggested the form include the following on the proof of service: “Physical description of party served (race, gender, approximate age, height, hair color and eye color): _____.”
Should this be added to the form?

Last year the committee approved a standard proof of service fee box and decided that it should be applied to all MC, CC, and DC forms with a proof of service. The committee agreed that the affected forms should be modified when the form is being revised for another purpose, rather than revising all the affected forms at one time. See the meeting minutes. Therefore, the standard proof of service box will be applied to MC 01.

Lunch - Noon - 12:30 p.m.

Joint Session continued – 12:30 p.m. - 2:30 p.m.

4. MC 20, Affidavit and Order, Suspension of Fees/Costs

A judge has requested the form be revised to reflect the detailed information on MC 287, Financial Statement, and JC 34, Financial Statement. It has been asserted that more detail will assist the courts in determining indigency because applications for fee waivers have increased dramatically in recent years. An alternative to this suggestion is to simply require that MC 287, Financial Statement, be attached to MC 20. Should MC 20 be revised to include more detail and, if so, what information should be included? Or, instead, should the form state that MC 287 should be attached? See also comment received during publication.

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

The Michigan Department of Treasury and the SCAO met in October 2009 to discuss concerns that Treasury was having with this form. The primary complaint was that Treasury had difficulty easily recognizing the information that needs to be extracted from the form – specifically the information in items 1 through 4 of the request section. After discussing the concerns with Treasury, the SCAO redesigned the request section so it is more user friendly and so the information that Treasury needs can be easily spotted. Also, the gray box regarding payment at the top of the form was moved and rephrased as a new item 5 in the request. The committee is asked to review the form for final approval.

The plaintiff’s social security number, when provided in lieu of an FE number, should not be visible on every copy of this form. The defendant’s social security number is blocked on all copies but Treasury, to help alleviate identity theft concerns. Therefore, the

committee should consider whether plaintiff's social security number should also be blocked on all copies but Treasury. The committee should note that Treasury cannot issue a check without the plaintiff's FE number (which is requested on the form) or a social security number in lieu of an FE number. See the attached memos that went to the courts in November 2009. See also comments received during publication.

6. MC 72, Petition for Testing of Infectious Disease

A judge has suggested that a "Waiver of Notice of Hearing" be added to this form pursuant to MCL 333.5205(5). It has been asserted that although the current form advises parties of the waiver, the form should also include a waiver provision. The proposed waiver language is as follows.

WAIVER OF NOTICE OF HEARING

I acknowledge receipt of the above Notice of Hearing on Petition for Testing of Infectious Disease and that I have read and understand my rights as stated herein. I hereby waive notice of hearing and consent to the court hearing the petition immediately.

_____	_____	_____	_____
Petitioner	Date	Respondent/Test subject	Date

Should a waiver be added to the form? If so, is the proposed language sufficient?

7. MC 219, Judgment of Sentence

A probation casework supervisor has suggested this form be modified to reflect whether the judge intended to revoke the deferred status that was imposed at the time of original sentencing. It has been suggested that a checkbox option be included to indicate deferral status is revoked (new language underlined):

"IT IS ORDERED:

- 7. Probation is revoked.
- 8. Deferred status is revoked.
- 9. Defendant is sentenced to jail as follows:"

Should the new provision be added? Is it necessary to explicitly state that deferred status is revoked when the entry of a judgment of guilt and the sentencing of the defendant essentially means that deferred status has been revoked? A draft is provided.

A judge has suggested the form be revised to include more detailed information. See the attached draft with the proposed changes. It has also been suggested the form be redesigned so that various predefined fields are offered on the back of the form. This will enable case management systems to make changes to the form without additional approval.

A probation worker has suggested the word “successfully” be inserted in item 11. It has been asserted that, because some people are not actually placed on probation, occasionally a question arises whether that person has to *actively* participate in court-ordered treatment. It is further asserted that some defendants also argue they have attended treatment and, therefore, they believe they have complied with the judgment, even if they do not receive a completion from the treatment center.

8. MC 227, Application to Set Aside Conviction

The SCAO has been notified that the Michigan State Police Criminal Records Division has a new permanent address of PO Box 30634, Lansing, MI 48913. Item 10 in the instructions should be changed to reflect this new address.

9. MC 231, Affidavit for Search Warrant and Search Warrant

The form and the instructions need to be revised to reflect an amendment to MCL 780.652 that went into effect April 1, 2009. MCL 780.652(2) now allows a warrant to be issued to search for and seize a person who is the subject of either of the following: (1) an arrest warrant for the apprehension of a person charged with a crime, or (2) a bench warrant issued in a criminal case.

A police officer has made several suggestions to revise this form: (1) make the font size larger and (2) reduce the space in item 1 and insert additional space for more information in item 3. The committee should note that SCAO technical design criteria dictate a print size of 8 point for captions, 10 point for narratives, and 10 point bold for titles.

10. MC 233, Order for Fingerprints

A chief deputy clerk has requested the form include more detail about the charge (such as “impaired,” etc.) in addition to the PACC code. The arresting agency currently receives this information from a copy of the charging document attached to the order. But it has been asserted that the time involved in copying the complaint and the amount of paper used could be reduced by reproducing this information on MC 233. The committee should note that this information can be printed by the JIS case management system, which would save time, and this same capability is available on other case management systems. Should the form be revised to include additional information about the charge?

11. MC 241, Bond

A magistrate has suggested that item 7 in the terms and conditions be changed to say, “I understand that if I violate items 12, 13, or 15 ...” (new language underlined). It has been asserted that item 15 is typically included in the terms and conditions.

12. MC 244, Petition and Order for Amendment of Order of Probation

It has been suggested the scope of this form be changed to include an option to revoke probation, among other things. Currently there is no court form for revoking probation. A draft is provided.

13. MC 274, Order for Mediation

The form has been redesigned for clarity and for compliance with MCR 2.410 and MCR 3.216. A draft is provided. See also comments received during publication.

14. MC 288, Order to Remit Prisoner Funds for Fines, Costs, and Assessments
MC 290, Satisfaction of Financial Obligation

A court employee has requested the address for the Michigan Department of Corrections Regional Business Office in Jackson be preprinted on the form because MC 288 is sent to that office. See the 2008 memo from the SCAO Trial Court Collections Division. Should the address be preprinted on the form? If so, should MC 290 also include the preprinted address because it is also sent to the MDOC Regional Business Office? See also comment received during publication.

15. MC 304, Order Regarding Alternate Service

This form was revised by the Circuit and District Section of the Michigan Court Forms Committee in March 2009. Committee members referred the changes to the Probate Section of the Michigan Court Forms Committee for its review in September 2009. The Probate Section approved the Circuit and District Section's changes and made one additional change by deleting "In the matter of _____" at the top of the form. See the meeting minutes. The form was distributed to the probate courts in December 2009 with a 9/09 revision date. It is on the agenda for review and final approval by the Circuit and District Section for distribution to the circuit and district courts in June 2010.

16. MC 321a, Juror Qualification Questionnaire

A county clerk has suggested that MCL 600.1313, which requires the return of the questionnaire within 10 days after it has been received, be cited at the bottom of the form.

17. MC 326, Notice of Hearing and Motion

Several court employees have questioned the need for a proof of service on this form. The proof of service was added in 2005, but there is no background information. It is suggested the proof of service be removed. But if it is not removed, it should be amended to comply with the standards set forth in MCR 2.107, and not MCR 2.105.

Last year the committee approved a standard proof of service fee box and decided that it should be applied to all MC, CC, and DC forms with a proof of service. The committee agreed that the affected forms should be modified when the form is being revised for another purpose, rather than revising all the affected forms at one time. See the meeting minutes. Therefore, if the proof of service remains on this form, the standard proof of service box will be applied.

18. MC 390, Ex Parte Motion and Order to Renew Civil Judgment

The committee developed and approved this form in 2009, but the form was held due to a few concerns. The SCAO recommended the form be republished for comment in 2010 because questions remain about (1) the form's distribution and (2) whether the moving party should be identified if different than the original plaintiff or defendant (judgment creditor). See the 2009 meeting minutes. See comment received during publication.

19. MC 391, Order Canceling Assignment of Wages

A court collections employee has requested that item 2 be changed to include a third option for " defendant/employee is no longer employed." An order canceling wage assignment is generated when the defendant is terminated from employment by the employer and the two options currently on the form do not apply to this situation. Should the form be revised to include an option for when the defendant is no longer employed?

20. MC 393, Drug Treatment Court Program Agreement and Order of Transfer

The State Drug Treatment Court Advisory Committee has developed this form and is requesting that it be approved for statewide use. A draft is provided.

21. New Form, Prosecutor's Motion for and Writ of Habeas Corpus

Last year certain committee members noted that MC 203, Writ of Habeas Corpus, is being required for video arraignments. The committee agreed that MC 203 is inappropriate for this purpose. As a result, two committee members each submitted a draft form that allows prisoners to attend video arraignments pursuant to MCR 6.006. The draft forms are provided. Should the form be developed for statewide use?

22. New Form, Confidential Asset Liability Form

The State Bar of Michigan Family Law Section has requested this form be approved for statewide use to address "the confusion and inefficiency of having multiple forms with varying degrees of detail and specificity." The proposed six-page form is not intended for public filing and would only be exchanged by the parties. A draft is provided. See also the letter from the Family Law Section. The SCAO has questioned whether this should be a form approved for statewide use because it will most often be used in divorce matters and there are no SCAO-approved divorce forms.

23. New Form, Order/Judgment for Pretrial Release/Custody/Sentence/Commitment to Jail

It has been suggested this form be approved for statewide use. The form was developed and is currently being used by the Oakland County Jail in conjunction with its videoconferencing system (OakVideo). The form includes only the information needed by the jail to efficiently process prisoners after video arraignment. It has been asserted that most of the Oakland County district courts are using this form and that the use of various current SCAO-approved forms is confusing and time consuming. The proposed form includes information that appears to have been extracted from several SCAO-approved forms, including MC 240 (Order for Pretrial Release/Custody), MC 219 (Judgment of Sentence/Commitment to Jail), and CC 219b (Judgment of Sentence, Commitment to Department of Corrections). A draft is provided. See also the attached letter for details. Should the form be developed? Or are the current SCAO-approved forms sufficient?

District Session - 2:30 p.m. - 3:30 p.m.

1. Motion and Affidavit

Last year the committee revised MC 230, Motion to Show Cause, to comply with the form of an affidavit pursuant to MCR 2.119(B). The committee revised the affidavit language to say, "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." See the meeting minutes. Committee members agreed this change should be made on all SCAO-approved forms that contain an affidavit. Accordingly, the SCAO has determined the affidavits on the following forms should be reviewed for possible changes: DC 87 and DC 99.

2. CIA 02, Judgment, Civil Infraction

It has been suggested the note to the defendant be reworded to avoid confusion regarding the 20 percent late penalty and the 56 days. As currently worded, some defendants think they have 56 days to pay, only to discover their driving privileges have been suspended.

3. CIA 07-JIS, Default Judgment, Civil Infraction

It has been suggested the note to the defendant be reworded to avoid confusion regarding the 20 percent late penalty and the 56 days. As currently worded, some defendants think they have 56 days to pay, only to discover their driving privileges have been suspended. See also comment received during publication.

4. DC 100a, Demand for Possession, Nonpayment of Rent, Landlord-Tenant
DC 100b, Notice to Quit, Health Hazard/Injury to Premises, Landlord-Tenant
DC 100c, Notice to Quit, Termination of Tenancy, Landlord-Tenant
DC 100d, Notice to Quit, Termination of Tenancy, Mobile Home Park-Mobile Home
Owner (Just-Cause Termination)
DC 100e, Demand for Possession, Termination of Tenancy Due to Unlawful Drug
Activity on Premises, Landlord-Tenant

An attorney has requested that the notarization on these forms be removed. He has asserted there is no legal authority, in court rule or statute, that these forms be notarized. See the attached e-mail.

The SCAO has researched the history behind these forms. Because the forms were developed in 1979, the reasoning for the notarization is unclear. However, while notarization is not required on these forms by court rule or statute, it is not prohibited by law either. In fact, notarization is included on many forms even though not required by law or court rule in order to emphasize seriousness. Also, the applicable statute refers to “service,” which is a legal term used for court process. Therefore, it may be that the forms committee, when developing the forms in 1979, assumed the general requirements of service and proof of service applied to these forms. The SCAO points out that the reason for the development of these forms is unclear, particularly because they are not actually “court” forms and there is no requirement they be used. Rather, they may have been developed to encourage consistent practices throughout the state in these types of proceedings.

In light of this, the committee has been asked to review the forms and discuss whether (1) notarization is appropriate on the forms and (2) the forms should be deleted altogether because they are not “court” forms that the SCAO should be prescribing, absent specific statute or court rule to do so. The committee should note that, aside from these forms, there are only a handful of other SCAO-approved forms that are not actually “court” forms.

See also comments received during publication.

5. DC 100a, Demand for Possession, Nonpayment of Rent, Landlord-Tenant
DC 102a, Complaint, Nonpayment of Rent, Landlord-Tenant
DC 104, Summons, Landlord-Tenant/Land Contract
DC 105, Judgment, Landlord-Tenant

A landlord has requested these forms be modified to simplify the eviction process, perhaps by combining some of the forms and/or removing certain sections. It has been asserted that various sections of the forms are unnecessary and duplicative. See the attached forms for details.

Last year the committee approved a standard proof of service fee box and decided that it

should be applied to all MC, CC, and DC forms with a proof of service. The committee agreed that the affected forms should be modified when the form is being revised for another purpose, rather than revising all the affected forms at one time. See the meeting minutes. Therefore, the standard proof of service box will be applied to DC 104.

6. DC 100c, Notice to Quit, Termination of Tenancy, Landlord-Tenant

This form was revised to incorporate a notice requirement for termination of tenancy cases on foreclosed property enacted by PL 111-22 (Protecting Tenants at Foreclosure Act). Section 702 of the law provides that the tenant is entitled to 90-day notice, and the use note was amended accordingly. The courts have already been instructed on the proper use of the form. It has been suggested the use note be changed to make it clear the form is not used in land-contract forfeitures and that DC 101, Forfeiture Notice, Land Contract, should be used instead. It has been asserted that plaintiffs (and the courts) may not know which form to use.

7. DC 105, Judgment, Landlord-Tenant

An attorney has requested that space be added so the property address can be included if it is different than the mailing address for the defendant, similar to DC 102a, Complaint, Nonpayment of Rent, Landlord-Tenant.

8. DC 107, Order of Eviction

The Michigan Court Officer, Deputy Sheriff, and Process Servers Association has asked the committee to reconsider last year's decision not to revise this form in the manner it had initially suggested. See the attached meeting minutes. The association has requested the instruction on the form be changed to the following: "To the Court Officer: You are ordered to remove the named defendant and all personal property from the premises." It has been asserted that the current language on the form, while consistent with MCL 600.5744, is inconsistent with the application of the law and the practical use of the form. While there is no statute that requires removal of personal property, the association has asserted that "full possession" requires removal of all incidents of third-party possession. See the attached letter for details. Should the form be revised? See also comments received during publication.

9. DC 243, Order of Probation (Misdemeanor)

A judge has suggested that a checkbox option number 9 specifically regarding protective conditions be added to the form, rather than having the protective conditions included with " Other:" in item 8. It has been asserted that some courts already add their own information as follows: " Defendant is restrained from harassing, stalking, or threatening or engaging in other conduct that would place (name of victim) in reasonable fear of bodily injury." Should a new item 9 be added?

Attachments

cc: Steve Capps
Amy Byrd
Anne Boomer
Sally LaCross
Jim Inloes
Jill Booth
JIS