



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner
Director

February 15, 2018

TO: Michigan Court Forms Committee, Criminal Workgroup

FROM: Matthew Walker, Forms and Manuals Analyst

RE: Agenda and Materials for **March 1, 2018 Meeting**

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

Below is the agenda for the March 1, 2018 meeting of the Michigan Court Forms Committee, Criminal Workgroup. The meeting will be held in room 1S-69. Lunch 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 W. Ottawa St., Lansing, MI 48915.

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

1. Minor Changes

MC 399, Motion to Set Aside Forfeiture and Discharge of Bond and Notice of Hearing

“Attorney” will be added to the signature line to account for a surety corporation represented by counsel.

MC 406a, Petition to Discontinue Sex Offender Registration

MC 406b, Order on Petition to Discontinue Sex Offender Registration

District court will be added to the header of these forms to accommodate a small number of offenses that are handled at the district court level.

2. Deletion Review

The following forms have not been revised in 10 or more years and are being reviewed for possible deletion. If comments are not received indicating these forms are being used, these forms may be deleted.

Form	Last Revision
CC 261, Waiver of Arraignment and Election to Stand Mute or Enter Not Guilty Plea	3/08
MC 233, Order for Fingerprints	5/07
MC 239, Removal of Entry from LEIN	3/06
MC 260, Waiver of Trial by Jury and Election to Be Tried without Jury	3/08

Public Comments:

- Good Afternoon,

Our court uses all of the forms listed in the deletion review:

CC 261, Waiver of Arraignment and Election to Stand Mute or Enter Not Guilty Plea
MC 233, Order for Fingerprints
MC 239, Removal of Entry from LEIN
MC 260, Waiver of Trial by Jury and Election to Be Tried without Jury

Thank you,

Hilary Arthur
Court Administrator/Magistrate
63rd District Court

- Our Court uses the following forms that are listed in the deletion review:

MC 233, Order for Fingerprints
MC 260, Waiver of Trial by Jury and Election to Be Tried Without Jury

Thank you,

Veronica Park
Administrative Assistant
77th District Court, Mecosta County

- MC 233 Order for Fingerprints we use every day as well as MC 239 Removal of Entry from LEIN. LEIN information cannot be kept in case files. These forms are necessary to provide proof of compliance.

Jeanine Blakely
92nd District Court
Luce and Mackinac Counties
Administrator/Magistrate

- Hello,

Our court uses the MC 233 Order for Fingerprints form. Please do not delete.

Thank you,

Tanya Todd
61st District Court
Clerk of the Court

- Our court uses all of the forms listed in the deletion review:
CC 261, Waiver of Arraignment and Election to Stand Mute or Enter Not Guilty Plea (all Circuit Court bind overs normally).
MC 233, Order for Fingerprints (daily for defendant's not arrested and prints are needed)
MC 239, Removal of Entry from LEIN (for protective bond conditions only)
MC 260, Waiver of Trial by Jury and Election to Be Tried without Jury (we use our own version of this).

Linda L. Lenahan
Court Administrator
57th District Court

- 55th District Court uses:

MC 233, Order for Fingerprints
MC 239, Removal of Entry from LEIN

Thank you,
Michael J. Dillon
Court Administrator
55th District Court

3. Ability to Pay Suggestions

It has been suggested by Street Democracy, a non-profit legal services organization serving the Detroit area, that multiple forms be revised to include language about payment alternatives under MCR 6.425(E)(3)(b). Street Democracy states that many court forms only advise defendants that payments are due at the time of assessment (MCR 1.110), but fail to mention the exceptions listed in MCR 6.425(E)(3). The emphasis on immediate payment perpetuates the perception that it is better to avoid courts than to show up with at least some money.

The following suggestions for criminal forms:

A. CC 219b, Judgment of Sentence (Commitment to Department of Corrections)

Revise item 10 to include language stating, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.” Draft provided.

B. CC 243a, Order of Probation

Revise item 6 to include language stating, “If you are not able to pay due to financial hardship, you have the right to request a payment alternative pursuant to MCR 6.425(E)(3).” Draft provided.

C. DC 243, Order of Probation

Revise item 6 to include language stating, “If you are not able to pay due to financial hardship, you have the right to request a payment alternative pursuant to MCR 6.425(E)(3).” Draft provided.

D. DC 213, Advice of Rights and Plea Information

Revise item 10 to state, “Unless there is good cause, fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment pursuant to MCR 1.110. If you are not able to pay due to financial hardship, you have the right to request a payment alternative pursuant to MCR 6.425(E)(3).” Draft provided.

E. MC 219, Judgment of Sentence (Commitment to Jail)

(1) Revise item 12 to remove the language, “Only the fine and some costs may be satisfied by serving time in jail.” This language was added by the Criminal Forms Workgroup in 2005 to clearly indicate that serving jail time does not offset restitution, crime victim fees, minimum state costs, or other related costs.

- (2) Revise item 12 to include the language, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.”

Draft provided.

F. MC 238, Judgment after Bond Forfeiture

- (1) Revise item 1 to include the language, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.”
- (2) Revised item 2b to include the language, “If you are in default because you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.”

Draft provided.

G. MC 242, Assignment to Youthful Trainee Status

- (1) Revise item 7 to remove the language, “Only the fine and some costs may be satisfied by serving time in jail.” This language was added to clearly indicate that serving jail time does not offset restitution, crime victim fees, minimum state costs, or other related costs.
- (2) Revise the form to include a note to the defendant stating, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.”

Draft provided.

H. MC 258, Report of Nonpayment of Restitution

Revise the form to include a note to the probationer stating, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.” Draft provided.

I. MC 294, Order Delaying Sentence

- (1) Revise item 9 to remove the language, “Only the fine and some costs may be satisfied by serving time in jail.” This language was added to clearly indicate that serving jail time does not offset restitution, crime victim fees, minimum state costs, or other related costs.
- (2) Revise item 9 to include a note to the defendant stating, “If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.”

Draft provided.

4. CC 414, Plea Agreement

It has been suggested that this form be modified for use in district courts.

This form is required by MCR 6.302(C)(1) in felony cases. Under MCR 6.302(C)(1), parties may state a plea agreement on the record or reduce it to a writing on a form substantially similar to CC 414.

MCR 6.302(C)(1) does not apply to misdemeanor cases. See MCR 6.001(B). However, the misdemeanor plea rule, specifically MCR 6.610(E)(5), does not require or prohibit a written record of a plea agreement.

Should the form be modified in this way?

If the form is modified, the distribution will be revised to include the prosecutor.

5. DC 118, Complaint and Summons Regarding Dangerous Animal

It has been suggested that subparagraphs in item 2 do not comply with the statutory language found in MCL 287.286a(1). Specifically,

- A. The form states, “the dog is over 6 months old, was without a license attached to its collar, and ran at large unaccompanied by its owner or engaged in lawful hunting after January 10 and before June 15.”

The statute states, “After January 10 and before June 15 in each year a dog over 6 months old is running at large unaccompanied by its owner or is engaged in lawful hunting and is not under the reasonable control of its owner without a license attached to the collar of the dog.” MCL 287.286a(1)(a).

- B. The form states, “the dog ran at large even though licensed and wearing the license tag.”

The statute states, “A dog duly licensed and wearing a license tag has run at large contrary to this act.” MCL 287.286a(1)(e).

Does the language of the form adequately reflect the statute or should it be modified?

6. DC 213, Advice of Rights

- A. It has been suggested by a district court judge that item 9 of this form be modified to more fully account for offenses where the penalty is above 93 days in jail. Item 9 states “You can be sentenced up to 93 days in jail or fined up to \$500 plus costs, or both unless

otherwise advised by the court. (The court will advise you if there is a minimum jail sentence.)”

Variations of this statement have been on the form since 1988 but have not accounted for offenses with higher penalties, except for the statement “unless otherwise advised by the court.” This issue was also addressed by the Court Forms Committee in 2011. At that time, the judge who made the suggestion had explained that (a) it is the judge’s responsibility to advise the defendant of the penalties and (b) not all misdemeanors are 93 days. The committee noted that, while this information is not required to be on the form, it is helpful because many misdemeanors do indeed have a maximum penalty of 93 days and/or a \$500 fine. The committee remarked that, while it is true that the judge should inform the defendant of the maximum penalty, the statement on the form is accurate because it indicates this is the penalty “unless otherwise advised by the court.” The committee further pointed out that having this information on the form allows the defendant to see it in writing as well as hear it from the judge, that MCR 6.610(D) and (E) allow some rights and information to be given in writing, and this statement accomplishes that task (if the court wishes to use the form for this purpose).

Does item 9 adequately account for offenses above 93 days or should the language be modified?

- B. It has been suggested that item 5d of this form be modified to replace the word “until” with “unless” to match Michigan Model Criminal Jury Instructions 1.9 and 3.2.

Should this suggestion be adopted?

Public Comments:

➤ Good Morning,

Regarding Paragraph 9 on the dc213 form, might I suggest rephrasing as follows:

“You can be sentenced up to the statutory maximum jail time and fines for your offense plus costs. (The court tells you what those maximums are and will advise you if there is a minimum jail sentence.)”

That way all possible misdemeanor sentences are contemplated (30 days to 1 year) plus all possible fine amounts.

Thank you,

David K. Heiss
Attorney Magistrate
10th District Court

7. MC 203, Writ of Habeas Corpus

The State Court Administrative Office has been made aware that the Michigan Department of Corrections does not require a writ of habeas corpus to produce a prisoner for a video hearing.

An e-mail with the following information is sufficient for scheduling:

MDOC PRISONER #:
Offender's Name:
Court Date:
Time (and TIME ZONE if out-of-state):
County:
Court/Jurisdiction:
Case/Docket #:
Charge(s) if applicable:
Judge:
Reason for writ/order (Felony, Misd., Civil, Etc...):
Type of Proceeding:
Needed 1/2 hr prior by phone for counsel (Y/N):

Because a writ is not necessary, should item 4 on this form be removed or modified?

**8. MC 227, Application to Set Aside Conviction
JC 66, Application to Set Aside Adjudication(s)**

Modifications to the instructions of these forms are suggested to clarify the requirement that a certified copy of the conviction or adjudication must be filed with the application.

Additional modifications are suggested to MC 227 to correct terminology and for consistency with JC 66.

Draft provided.

9. MC 240, Pretrial Release Order

A. Modifications to the language under the "Bond deposited by Third Party Surety/Agent" section on page 3 of the form have been suggested. The suggester states

that the form incorrectly indicates that the surety is responsible for all the terms and conditions of a defendant's pretrial release.

The suggester states that surety agents are only responsible for the defendant's appearance and not any other terms and conditions of release. See MCL 765.28(1) and MCR 6.106(I)(2)(b).

- B. It has been suggested that a "Bond Acceptance" section be added on page 3. The suggester states that the bond acceptance section is helpful to indicate who signed the bond, in case there are any issues or missing information.

A bond acceptance was present on MC 241, prior to it being integrated into MC 240. In 2017, when MC 240 and 241 were integrated, the committee briefly discussed this issue. At that time, members thought that the acceptance section acted as a kind of receipt. The committee thought it would be unnecessary because most courts and jails issue a separate receipt. However, it has been reported that not every court and jail issue a receipt for every instance and that a bond acceptance section would help with this issue.

Draft provided.

Public Comments:

➤ Hello,

I'd like to make a suggestion for the new MC 240 Pretrial Release Order. The form is three pages and currently only the case number is displayed on pages 2 and 3. Could you add the defendant name to pages 2 and 3 in the next update?

Thank you,

Vicki Nellis
User Support Specialist
52nd District Courts

10. MC 256, Summons, Criminal

It has been suggested that "Court clerk" be removed from the signature line of this form because a court clerk does not have the legal authority to sign a summons.

Should this suggestion be adopted? Draft provided.

11. MC 267, Order for Vehicle Immobilization

Modifications are suggested to item 1 of this form to accommodate convictions under MCL 257.626(3) and (4) as provided by MCL 257.904d(1)(a).

Draft provided.

12. MC 288, Order to Remit Prisoner Funds for Fines, Costs, and Assessments

Modifications to update this form to current Michigan Department of Corrections procedures, addresses, and terminology are suggested.

In addition, the writing space for “SID” will be removed because it is not necessary on this form.

Draft provided.

13. MC 290, Satisfaction of Financial Obligation

Modifications to update this form to current Michigan Department of Corrections procedures, addresses, and terminology are suggested.

In addition, the writing space for “SID” will be removed because it is not necessary on this form.

Draft provided.

14. MC 502, Notice of Filing of Transcript and Affidavit of Mailing

It has been suggested that e-mail be added to the Affidavit of Mailing section on this form. Under MCR 7.109(B)(3)(e) and MCR 7.210(B)(3)(e), is e-mail an acceptable form of notification?

Modifications are suggested to item 1 of this form to accommodate previously filed transcripts.

Draft provided.

15. New Form Request: Probation Violation Advice of Rights

It has been suggested that a probation violation advice of rights be created to help ensure probationers fully understand their rights and the process.

The form would be created to provide the information in MCR 6.445(B), (C), (D), and (E). These subrules apply to misdemeanor and felony cases. See MCR 6.001(A) and (B). These subrules are silent on the use of a written advice of rights for probation violations.

Should this form be adopted?

Draft provided.

Public Comments:

- Referencing the Probation Violation Advice of Rights:

Para 5 and 9 need to be reconciled. 9 says there is a right to be released on bond. 5 says must have hearing within 14 days or released on bond. I think 5 is correct. I don't believe there is a right to be released if the hearing is held within 14 days. The form confuses this.

Thank you.

Judge Robert Pattison
3B District Court
St. Joseph County

- Three paragraphs we would ask you to consider revising as follows:

4. Add at the end of the sentence, "if it is determined that you have the ability to pay".

9. Add at the end of the sentence, "if arraigned on a violation of an Order of Probation".

10. Revise this paragraph to read: "If the Court finds that you are in contempt of court because you have been found to have violated a condition of probation, or pled guilty or no contest to a violation, the Court may order you to continue probation with or without modifications, may extend your probation period, may impose a term of incarceration and continue probation with or without modifications or revoke probation and impose a sentence of incarceration".

Judge Charles Goedert
43rd District Court
Oakland County