



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MICHIGAN COURT FORMS COMMITTEE Civil Workgroup Minutes of March 8, 2018

- Present: Honorable Richard Ball, 54B District Court
Ms. Julie Dale, 3rd Circuit Court
Ms. Kathy Griffin, 45th Circuit Court
Ms. Chalunda Hamilton, 46th Circuit Court
Honorable Scott Hill-Kennedy, 49th Circuit Court
Honorable Jon Hulsing, 20th Circuit Court
Honorable Patricia Jefferson, 36th District Court
Ms. LaDierdre McKinney, Michigan Legal Help
Mr. Curtis Robertson, Weber & Olcese PLC
Mr. James Schaafsma, Michigan Poverty Law Program
Honorable Karen Valvo, 15th District Court
Ms. Marie Hassett, Judicial Information Services (Staff)
Ms. Carol Rochester, Judicial Information Services (Staff)
Ms. Stephanie Beyersdorf, Trial Court Services (Staff)
Ms. Sheryl Doud, Trial Court Services (Staff)
Ms. Bobbi Morrow, Trial Court Services (Staff)
Ms. Michele Muscat, Trial Court Services (Staff)
Ms. Rebecca Schnelz, Trial Court Services (Staff)
Mr. Andrew Smith, Trial Court Services (Staff)
Mr. Matthew Walker, Trial Court Services (Staff)
Ms. Stacy Westra, Trial Court Services (Staff)
- Absent: Honorable Annette Berry, 3rd Circuit Court
Ms. Laura Echartea, 36th District Court
Ms. Karen Haydett, 38th District Court
Mr. Michael Kiehne, Michigan Legal Help

Ms. Sandra Moore, 46th Circuit Court
Mr. Stuart Sandweiss, Sandweiss Law Center PC
Ms. Liz Stankewitz, 89th District Court
Mr. Jay Francisco, Judicial Information Services (Staff)

District Court Session

1. Minor Changes

CIA 03, 14-Day Notice, Civil Infraction

The committee added the language “Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment.” to comply with Court Collections Program Component 2 and MCR 1.110.

STAFF NOTE: After consultation with Supreme Court Administrative Counsel, the fines, costs, and other financial obligations language was replaced with a direct restatement of MCR 1.110. The form now states, “Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.”

2. DC 53, Appeal Worksheet for Application for Leave to Appeal DC 54, Appeal Worksheet for Claim of Appeal of Right

The committee considered modifying these forms to include references to form MC 20, Waiver/Suspension of Fees and Costs. Members agreed that including a reference to MC 20 and waiver of filing fees would be beneficial on this form. The reference would inform indigent litigants of the ability to waive filing fees.

The committee first reviewed the draft language of DC 53. Members commented that the proposed draft language only conveys that the litigant file the waiver. Instead, the language should convey that the court must grant a waiver. The committee added the language, “unless waived for indigency (form MC 20).” to items 1b and 4d. The committee also modified the instructions. In item 1f of the checklist, the committee replaced the language “unless appellant is indigent” with “unless waived for indigency (form MC 20).” In item 7j of the checklist, the committee modified the instructions to state “pay taxable costs of prevailing party, together with \$25*** (unless waived for indigency (form MC 20)) to clerk of district court.”

The committee next reviewed the draft language of DC 54. Members agreed that the language on DC 54 should be consistent with DC 53. The committee added the language, “unless waived for indigency (form MC 20).” to items 1c and 1h. The committee also

modified the instructions. In item 1a(vi) of the checklist, the committee changed the language to state “proof that the appeal fee has been paid or waived.” In item 1b of the checklist, the committee changed the language to state “pay appeal fee to circuit court clerk, unless waived for indigency (form MC 20).” In item 1d of the checklist, the committee changed the language to state “pay taxable costs of prevailing party, together with \$25 (unless waived for indigency (form MC 20)) to clerk of district court.”

The forms were approved as revised.

3. DC 85, Judgment, Small Claims

- A. The committee considered modifying this form to clarify when a judgment-creditor can begin collecting the judgment. The suggester stated that the form is misleading because it lists different dates of when collection can begin: item 2 states 30 days and the notice below the judge’s signature states 21 days.

SCAO staff stated that while the form seems contradictory, item 2 and the notice provide separate legal information. Item 2 stems from MCL 600.8410(5), which requires the judge to order the defendant to disclose in writing to the plaintiff and the court his or her place of employment and location of bank/credit union accounts if the defendant does not pay the judgment within 30 days.

The notice language below the judge’s signature line which states in part, “[i]f this judgment is not paid as ordered or within 21 days, you may be ordered into court for questioning regarding your assets, your property may be seized, or garnishment may issue after 21 days.” stems partially from MCR 4.305(C). MCR 4.305(C) states that a writ of garnishment may be issued 21 days after the judgment is entered.

The committee agreed that item 2 and the notice provide separate information. The difficulty is that the information can be confusing. The committee agreed that the form could be clarified. Members discussed how to clarify the language, but struggled to find adequate language. Ultimately, the committee decided to table the item and allow SCAO staff an opportunity to draft satisfactory language after the meeting.

The committee also considered removing the checkbox option from item 2. Members stated that MCL 600.8410(5) requires the statement to be in the form—it is not optional. Therefore, the committee removed the checkbox from item 2.

- B. The committee considered modifying the title of the form to “Judgment/Dismissal, Small Claims.” The suggester stated that the title of this form does not inform individuals that it should be used for dismissals. Instead, individuals use form MC 09, Dismissal, which does not accommodate usage in small claims cases. Members agreed that changing the

title would clarify the form's usage. The committee changed the title to "Judgment/Dismissal, Small Claims."

The form was approved as revised.

STAFF NOTE: After further review, the language of item 2 and the notice were retained. The differing language on the form provides separate legal information and SCAO staff did not think modified language would clarify the form more than the current language.

4. DC 105, Judgment, Landlord-Tenant

The committee considered revising this form to contain general instructions. The suggester stated that instructions would be helpful to self-represented landlords. Members did not think instructions were necessary for this form because there are other options available to landlords, like the Landlord-Tenant handbook produced by the Michigan Legislature. Alternatively, a landlord could seek assistance from an attorney.

The form was not revised.

Joint Session

5. Deletion Review

The committee considered deleting the forms listed below. SCAO staff noted that no public comments were received about whether these forms are used.

Form	Last Revision
CC 05, Order to Deposit Funds	4/87
CC 18, Order to Release Funds	4/87
CC 78, Dismissal of Prisoner Civil Action, Frivolous Action	3/08
MC 29, Notice of Intent to Destroy Discovery Materials	6/93
MC 92, Cash Bond	6/05

CC 05 and CC 18: Members were not familiar with either of these forms and did not use them. For that reason, the committee deleted both forms.

CC 78: SCAO staff stated that CC 78 was created for statutory reasons. MCL 600.5529 requires the State Court Administrative Office to compile and maintain a list of civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. In turn, this requires courts to report any prisoner cases that are dismissed. Recently, 2018 PA 54 repealed this statutory requirement. For this reason, reporting is no longer necessary. SCAO staff questioned whether the form was still useful otherwise. Members commented that the

form was not necessary because MC 09, Dismissal could be used instead. The committee deleted the form.

MC 29: Members commented that this form is used in courts. The committee retained the form.

MC 92: Members commented that this form is used in courts. The committee retained the form.

6. MC 09, Dismissal

The committee considered adding “Magistrate” to the signature line of this form or alternatively, adding a note to the form to indicate that it should not be used in small claims cases and DC 85 should be used instead. The suggester stated that in small claims cases, parties often submit this form for dismissal, rather than form DC 85.

Members did not think Magistrate should be added to the signature line of the form because it could easily lead to further misuse of MC 09—MC 09 is not intended for use with small claims cases. Members agreed that adding a note stating that DC 85 should be used for small claims would be helpful, especially because members agreed to change the title of DC 85 to indicate it is used for dismissals. See agenda item 3b.

The committee added a note to MC 09 stating, “Note: For dismissal of a small claims action, use form DC 85.”

The form was approved as revised.

7. MC 20, Waiver/Suspension of Fees and Costs

The committee considered modifications to item 1b of this form. Item 1b of this form allows individuals to list sources of public assistance other than MDHHS, pursuant to MCR 2.002(C). The item requests that the individual list the "type, source, and case number (if any)" of that public assistance. However, for some sources of public assistance, the individual's social security number is the case number. Examples of this include Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). It was suggested that item 1b clarify that individuals should not provide their social security number if it is their case number.

To alleviate this issue, SCAO staff suggested striking case number from item 1b. SCAO staff remarked that a case number is not necessary to waive fees under MCR 2.002(C). See *Shover v Shover*, unpublished per curiam opinion of the Court of Appeals, issued October 20, 2016 (Docket No. 327548), p 1. *Shover* provides the following on this issue:

Pursuant to MCR 2.002(C), a presumption of indigency arises once a party makes a showing, by affidavit or otherwise, of receipt of public assistance. See *Hadley v Ramah*, 134 Mich App 380, 387–388; 351 NW2d 305 (1984). Once that presumption is established, “absent some type of hearing or finding negating the presumption [that a] plaintiff was indigent, MCR 2.002(C) require[s] the court to suspend the fees.” *Meece v Meece*, 223 Mich App 344, 347; 566 NW2d 310 (1997). However, if “sufficient evidence” later reveals a “plaintiff’s ability to pay the fees,” the court may order payment of the waived or suspended fees. *Id.*; see also MCR 2.002(G) (stating that a court may, on its own initiative, order payment of previously waived or suspended fees “when the reason for the waiver or suspension no longer exists”). Requiring the payment of previously suspended fees thus requires the taking of additional evidence that would overcome the presumption of indigency and support the party’s ability now to pay the suspended fees.

The committee agreed that it is reasonable to conclude from *Shover* that a case number is not necessary to waive fees under MCR 2.002(C). The committee removed “case number” from item 1b and rephrased the sentence to state “The type or source is:”

The committee also revised the instructions for the form by striking the words “and your case number if you have one.” from item 1 of the instructions.

The form was approved as revised.

STAFF NOTE: This form is being held for review for the EPIC Forms Workgroup in the fall.

8. MC 35, Complaint, Claim and Delivery

The committee considered a suggestion to clarify or remove item 6 from this form. The suggester stated that item 1 establishes the property and its value; item 5 establishes the amount of a supplemental money judgment if necessary. However, it is unclear as to what item 6 is intended to represent.

Members agreed that item 6 of the form is confusing. Members thought that item 6 is intended to represent the total amount of the claim. To clarify item 6, the committee rephrased it to state, “6. The plaintiff claims a judgment for the return of the described property and also for damages. The total value of the property and damages is \$_____.”

The committee also discussed the supplemental compliant section of the form. Members were confused as to why this section existed on the form as a supplemental complaint instead of an additional count in the complaint. Members remarked that a supplemental complaint is

a term of art under MCR 2.118(E) that allows a party to plead additional transactions or events after filing the original complaint. In claim and delivery actions, an action based on a security agreement can be joined as a separate count in the complaint. See MCR 3.105(C). However, it does not appear to be supplemental to the original pleading.

The committee requested that SCAO staff review this form further to determine why the supplemental complaint section exists. JIS staff indicated that when filing a “money judgment” aka “supplemental complaint,” there is an additional filing fee. By referring to it as a supplemental complaint, this may make it easy for the court clerk to know when an additional filing fee is required.

The form was approved as revised.

9. MC 302, Proof of Mailing

The committee considered modifying this form to accommodate personal service. The suggester stated that creating a generic proof of service form would be helpful to practitioners and self-represented litigants.

SCAO staff remarked that the suggested change seemed unnecessary. At the initiation of a case, SCAO-approved case initiation forms all contain an attached proof of service accommodating personal service and other service types. After service of process is achieved, MCR 2.107(C)(3) allows for litigants to mail documents, which is where MC 302 is used. In addition, many SCAO-approved forms contain an integrated proof of mailing section.

Based on the staff comments, the committee agreed that modifications to MC 302 were unnecessary.

The form was not revised.

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

The committee considered modifications to this form to comply with the Service Members Civil Relief Act (SCRA), 50 USC 3931. SCAO staff explained that the United States Department of Justice requested that this form be revised to comply with the SCRA. The SCRA applies to any civil action or proceeding in which the defendant does not make an appearance. 50 USC 3931(a).

Members agreed that the SCRA applies to these proceedings because a defendant is unlikely to make an appearance with a judgment renewal. Many courts do not hold hearings on these matters. Further, a judgment renewal would fall within the definition of a judgment for the

SCRA. See 50 USC 3911, defining judgment as any judgment, decree, order, or ruling, final or temporary.

The committee agreed with the draft language. A new item 4 was added to the form stating “4. a. Defendant is is not in military service. Facts upon which this conclusion is based are: (Specify).

b. Plaintiff is unable to determine if the defendant is in the military service.” The new item 4 complies with 50 USC 3931(b)(1).

A declaration stating “I declare under the penalties of perjury that this motion has been examined by me and that its contents are true to the best of my information, knowledge, and belief.” was added above the signature line of the motion. The declaration language was included to satisfy the affidavit requirement of 50 USC 3931(b)(1). A declaration can be used in lieu of an affidavit according to 50 USC 3931(b)(4).

A note was added in the order section stating, “Note: If the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. 50 USC 3931(b)(2). This note informs the court of the requirements of the SCRA. The court can then proceed by checking the “scheduled for hearing” box. An order appointing counsel and a notice of hearing would be generated separately from this form.

The committee also added a citation to 50 USC 3931 to the footer.

The committee also discussed that other forms may be out of compliance with the SCRA. The committee requested that SCAO staff review all forms to determine compliance with the SCRA. Any forms that are not in compliance with the SCRA will be brought before the committee in 2019.

The form was approved as revised.

STAFF NOTE: The note in the order was changed to state, “Note: If the defendant is in military service, the court may not enter a judgment until after an attorney is appointed to represent the defendant. 50 USC 3931(b).” This change was made for spacing.

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

The committee considered a suggestion to modify item 1 of this form to include a writing space for a date. The suggester stated that “this date” should be replaced with a writing space because court reporters do not always file the transcript on the date this form is filed. Members agreed with this suggestion. The committee replaced “this date” with a writing space. The committee also clarified item 1a by changing “a portion of the total proceedings” to “a portion of the transcript of the total proceedings.”

The committee also considered adding e-mail to the Affidavit of Mailing section of the form. Members did not agree with the suggestion because it is not clear that MCR 7.109(B)(3)(e) or MCR 7.210(B)(3)(e) allow for e-mail service of the transcript. Therefore, no change was made.

The form was approved as revised.

12. New Forms Request: Notice of Garnishee’s Failure and Request for Entry of Default Against Garnishee

The committee considered creating a Notice of the Garnishee’s Failure form and a Request for Entry of Default against Garnishee form under MCL 600.4012(6) and (7). The suggester stated that many attorneys and self-represented litigants are confused by the process and creation of SCAO forms would clarify the process.

SCAO staff remarked that the 2016 Civil Forms Workgroup addressed this issue and decided not to create forms because there were no court rules and a clear procedure had not been established. To date, no court rules have been created regarding these procedures.

The member from the Creditor’s Bar Association remarked that he had received no comments from the Creditor’s Bar Association on this issue. Other members commented that many practitioners have created their own forms. Based on the discussion, the committee did not create new forms.

Circuit Court Session

13. CC 79, Claim of Appeal on Application for Concealed Pistol License

- A. The committee considered modifications to the distribution and the certificate of mailing section to always include a copy of the form for the county clerk. The county clerk is always required to receive a copy of this form because the county clerk must provide a copy of the certified record to the circuit court. Members agreed with the suggestions. The committee added the county clerk to the distribution and in the certificate of mailing.
- B. The committee considered modifications to this form to indicate that an appeal must be filed within 21 days of entry of the decision being appealed. SCAO staff commented that the decision being appealed could be the county clerk, Michigan State Police, or local police. Members agreed that the note would be helpful. The committee added a note stating, “Note: This appeal must be filed within 21 days of entry of the decision being appealed.”

- C. The committee considered modifications to item 1c to remove unnecessary language. SCAO staff explained that the sentence “The application filed on _____ complied with MCL 28.425b(1), (5), (9).” is unnecessary because it is not legally required and there is only one application. Members agreed and the committee removed the language.
- D. The committee considered removing item 1d. Item 1d is an appeal of the failure of the county clerk to reinstate a license under MCL 28.428(2). MCR 7.121(B) clarifies that an appeal of a failure to reinstate a concealed weapon license is treated in the same manner as a failure to issue a license. Therefore, the item is not necessary.

The committee considered adding a note to clarify that an appellant should check item 1c to appeal a failure to reinstate. Instead, members suggested modifying item 1c to include language regarding reinstatement. The committee changed item 1c to state, “failure of the county clerk to issue or reinstate a license to carry a concealed pistol.”

The form was approved as revised.

STAFF NOTE: A citation to MCR 7.121 was added to the footer.

- 14. CC 376, Personal Protection Order (Domestic Relationship)**
CC 376m, Personal Protection Order Against a Minor (Domestic Relationship)
CC 380, Personal Protection Order (Nondomestic)
CC 380m, Personal Protection Order Against a Minor (Nondomestic)
CC 383, Order Denying or Dismissing Petition for Personal Protection Order
CC 385, Order on Motion to Modify, Extend, or Terminate Personal Protection Order
CC 396, Personal Protection Order (Nondomestic Sexual Assault)
CC 396m, Personal Protection Order Against a Minor (Nondomestic Sexual Assault)

The committee considered a suggestion to integrate an order to extend a personal protection order into the personal protection order forms. SCAO staff stated that under MCR 3.707(B)(2), it appears that courts are required to enter an amended personal protection order when an extension is granted. Currently, the court forms do not accommodate issuing an amended personal protection order. Instead, form CC 385 allows the extension of a personal protection order and states that the conditions of the existing personal protection order are continued.

The committee discussed whether or not MCR 3.707(B)(2) requires entry of an amended personal protection order when granting an extension. Members thought the requirements of the court rule were sufficiently accomplished through CC 385 because it is an order that amends the personal protection order. Members stated that requiring courts to enter an amended personal protection order when granting an extension would dramatically increase

the workload of larger courts. Members remarked that it does not appear that any law enforcement or other groups have an issue with the current process. As such, the committee did not think the forms should be amended.

The forms were not revised.

STAFF NOTE: After review, the modifications to CC 383 were not considered by the committee. SCAO staff reviewed the suggestion and think that the form may require redesign. For these reasons, the modifications to CC 383 were tabled until 2019.