



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

March 19, 2018

Amended October 26, 2018

MICHIGAN COURT FORMS COMMITTEE

Domestic Relations Workgroup

Minutes of March 15, 2018

Present: Ms. Carol Bealor, 43rd Circuit Court
Ms. Amy Billmire, Michigan Legal Help
Honorable Brian Kirkham, 37th Circuit Court
Honorable Jeff Matis, 6th Circuit Court
Ms. Kelly Morse, MDHHS Office of Child Support
Ms. Erin Rothfuss-Magley, 20th Circuit Court, Family Division
Ms. Gail Seaton, MDHHS Office of Child Support
Ms. Shelley Spivack, 7th Circuit Court
Mr. Kent Weichmann, 3rd Circuit Court
Ms. Amy Yu, Amy Yu, PC
Mr. Bill Bartels, Friend of the Court Bureau (Staff)
Ms. Stephanie Beyersdorf, Trial Court Services (Staff)
Ms. Sheryl Doud, Trial Court Services (Staff)
Mr. Matthew Walker, Trial Court Services (Staff)

Absent: Ms. Laura Cleland, MDHHS Office of Child Support
Mr. Edward Messing, St. Clair County Friend of the Court
Ms. Gail Towne, Lennon, Miller, O'Connor & Bartosiewicz, PLC
Ms. Rebecca Schnelz, Trial Court Services (Staff)
Ms. Stacy Westra, Trial Court Services (Staff)

1. 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, except FOC 25.

Form	Last Revision
CC 88, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment (Domestic Relations)	3/08
CC 89, Judgment after Bond Forfeiture (Domestic Relations)	3/08
FOC 5, Order Regarding Income Withholding	3/08
FOC 7, Notice of Hearing	3/08
FOC 18, Publication and Notice of Friend of the Court Annual Statutory Review	3/08
FOC 22b, Employment Status Disclosure	3/08
FOC 25, Order Changing Venue and Transferring Case (Post Judgment)	10/04
FOC 41, Order for Bond to Secure Future Support	10/04
FOC 44, Order Releasing or Forfeiting Bond to Secure Future Support	10/04
FOC 46, Lien Order	3/08
FOC 48, Order to Release Lien	3/08
FOC 54, Notice to Enter Order Without Hearing	3/08
FOC 63, Agreement Suspending Immediate Income Withholding	3/08
FOC 64, Order Suspending Immediate Income Withholding	3/08
FOC 69, Notice of Review on Arrearage (Consumer Reporting Agency)	3/08

Members reviewed each form and determined that each form was still in use. The committee did not delete any forms.

2. 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 explained that the Civil Forms Workgroup 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 with the Civil Forms Workgroup 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 agreed with the revised 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.

3. 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 agreed with the Civil Forms Workgroup’s clarification to 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.

4. FOC 10, Uniform Child Support Order
FOC 10a, Uniform Child Support Order, No Friend of the Court Services

- A. The committee considered modifications to these forms to accommodate listing support for more than five children. SCAO staff explained that local court staff are having difficulty expressing support for more than five children because the forms only accommodate five children. However, the Michigan Child Support Formula does produce different amounts of support for more than five children, particularly when the overnights vary for each child. Members remarked that it is rare to need columns for more than five children, but agreed that the forms should accommodate it when necessary.

After discussion of several options, the committee decided to add a checkbox beneath the grid in item 1 stating, “[] See item 13 for obligations involving more than five children.” Item 13 is the “Other” space and will allow local court staff to include an additional grid. The committee also removed the words “or more” from the column regarding 5 children. On FOC 10a, the number 13 will be replaced with number 9.

- B. The committee considered modifications to these forms to accommodate expressing child care amounts for specific children. Based on these forms, a local friend of the court office cannot know how much of any child care obligation is associated with any specific child or the amount that the court intends to stop when a child attains the age that child care should end.

Currently, these forms express a single child care amount for multiple children. When one child ages out of the child care obligation, the child care expense drops by that child’s pro rata share of the child care amount. For example, if \$300 is being charged for child care and one child ages out, that child care amount will drop by 1/3 or \$100. Under the 2017 Michigan Child Support Formula Manual section 3.06(D), this is the correct method for reducing the child care amount, unless otherwise stated in the order.

Members discussed this issue at length to decide what to do. Some members felt it was important to list the specific child care amounts so that the reimbursement is accurate. Members considered adding a writing space to the form to allow specific amounts to be listed, but it was pointed out that this might lead to confusion. Child care expenses are paid in a ratio—one parent may pay 60% and the other pays 40%. If the total amount paid for child care is written in, it would not account for this ratio.

Ultimately, the committee decided that designing these forms to write in specific amounts for child care unnecessarily complicates them. Instead, members agreed to revise the forms to more explicitly state the pro rata reduction. If an attorney or judge wishes to be

more specific about the child care reduction amount, then he or she can do so in the “Other” space.

The committee modified the Obligation Ends paragraph in item 1 of each form by removing the sentence “The child care obligation for each child ends August 31 following the child’s 12th birthday. The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses.” The committee created a new paragraph titled Child Care below the Post-majority Support paragraph. The new paragraph states, “The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses. The child-care obligation for each child ends on August 31 following the child’s 12th birthday, at which time the total child care reduces by that child’s pro rata share unless specified differently in this order.”

In addition to the changes listed above, the committee applied the standard second page header to these forms.

The forms were approved as revised.

STAFF NOTE: After discussion with MiCSES and DHHS Office of Child Support staff, SCAO staff decided not to make the suggested changes for five or more children. The programming requirements to make these changes to the MiCSES system are significant and data indicates that only .28% of cases involve six or more children.

5. FOC 87, Motion Regarding Custody

- A. The committee considered a suggestion to include language about incarcerated parties under MCR 2.004. Under MCR 2.004, a party seeking an order regarding a minor child shall (1) contact the Michigan Department of Corrections to confirm the incarceration and the incarcerated party’s prison number and location, (2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served, and (3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party’s prison number and location. In addition, the caption of the petition or motion shall state that a telephonic or video hearing is required by this rule.

SCAO staff remarked that this suggestion had also been considered internally, but was not adopted because it would be difficult to fully implement and only impacts a small percentage of cases. In addition, the suggestion would impact a number of forms including FOC 87, FOC 65, FOC 50, juvenile court forms, and circuit court family division forms.

Committee members considered several options to implement the suggestion including revising the instructions. Ultimately, the committee decided not to implement the suggestion because it would be difficult to fully implement, only impacts a small percentage of cases, and complicates the forms.

- B. The committee considered whether this form should be used to establish a custody order. Members agreed that the form can be used to establish a custody when necessary in an existing case, but the form cannot be used to start a new case. An example would be a child support case, where a prosecutor has established a support order, but a custody or parenting time order has not been established.

Based on this conclusion, the committee revised item 6 to state, “It is in the best interests of the child(ren) to establish or change custody for the following reasons.” The committee also revised item 5 by removing the words “requiring a change in custody.” The modification to item 5 was necessary to reconcile it with establishing custody.

The committee also corrected a typographical error in the certificate of mailing section.

The form was approved as revised.

6. FOC 106, Notice of Redirection or Abatement of Child Support

The committee considered a suggestion that item 1 be revised to distinguish between redirected and abated child support, as provided in MCL 552.604d(4). Item 1 applies to cases where the FOC is redirecting or where FOC is abating support. The suggester stated item 1 is incorrectly applied to abated support because MCL 552.605d(4) distinguishes between redirecting and abating support. The suggester stated that the issue of whether the children currently abide with the current support recipient applies when redirecting support and is not a requirement when abating support. For that reason, item 1 would be inaccurate if the parties were reconciling and living together with the children. The suggester stated that this could lead to unnecessary objections to the orders.

Members agreed with the suggester’s reasoning and agreed that the form should be revised. The committee revised the form by removing item 1 and renumbering subsequent items. Item 2 (formerly item 3) was revised to state, “2. This change is effective on ____ (Date) _____ for the following children: _____.”

The committee also reviewed form FOC 107, Notice of Objection to Proposed Redirection or Abatement of Child Support. The committee removed item 1, which states, “The friend of

the court has been advised that the minor child(ren) named below is/are no longer in the care of the current support recipient: _____.” The committee remarked that item 1 is not needed on FOC 107 because the names of the children are contained on FOC 106 and not needed on FOC 107.

The forms were approved as revised.

7. FOC 112, Order to Remit Prisoner Funds for Child Support

The committee considered modifications to update this form to current Michigan Department of Corrections (MDOC) procedures, addresses, and terminology. Members agreed that the revisions were necessary to update the form.

The committee revised the distribution from MDOC Regional Business Office to MDOC Court Order Department. The references to “prisoner’s account” and “institutional account” were updated to “prisoner’s trust account.” The committee did not adopt the draft suggestion in item 3 to change the word “paroled” to “released on parole” because the wording means effectively the same thing.

In the certificate of mailing, “processing unit” was replaced with “department.” The mailing block was updated by removing the fax number and updating the address to:

ATTN: Court Order Department
Michigan Department of Corrections
Jackson Business Office
4000 Cooper St.
Jackson, MI 49201

MDOC-CourtOrders@michigan.gov

The form was approved as revised.

8. New Form Request: Motion to Set Aside Default under MCR 3.210

The committee considered a suggestion to create a new motion to set aside default under MCR 3.210(B) (as amended by ADM file 2010-32). The suggester stated that form MC 99, Motion and Affidavit to Set Aside Default (Civil) is confusing for self-represented litigants because MCR 3.210 does not require a meritorious defense.

SCAO staff pointed out that the requirements to set aside a default or default judgment in a domestic matter are quite different from the requirements in a general civil matter. Members agreed and thought that the creation of a motion and accompanying order would be helpful to the legal community.

SCAO staff stated that a draft would be created and presented for review to the committee this year.

STAFF NOTE: SCAO staff created forms CC 99d, Motion to Set Aside Default/Default Judgment (Domestic Relations) and CC 99e, Order Regarding Motion to Set Aside Default / Default Judgment (Domestic Relations). On form CC 99d, item 1 was designed for setting aside defaults under MCR 3.210(B)(3) and item 2 was designed for setting aside default judgments under MCR 3.210(B)(6). MCR 3.210(B)(6) includes a clause regarding subject matter jurisdiction, but this was not included on the form. SCAO analysts concluded the subject matter jurisdiction clause would only apply in situations where the original divorce matter was accidentally filed in district or probate court. Because this situation is unlikely, it was unnecessary to include it on the form.