



## **Michigan Supreme Court**

State Court Administrative Office

### **Trial Court Services Division**

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March 15, 2019

### **MICHIGAN COURT FORMS COMMITTEE**

Civil Workgroup

Minutes of March 14, 2019

- Present:
- Honorable Richard Ball, 54B District Court
  - Honorable Annette Berry, 33rd Circuit Court
  - Ms. Julie Dale, 3rd Circuit Court
  - Mr. Brandon Evans, Kendricks, Bordeau, Keefe, Seavoy and Larsen, P.C. (Phone)
  - Ms. Kathy Griffin, 45th Circuit Court
  - Ms. Chalunda Hamilton, 46th District Court
  - Honorable Jon Hulsing, 20th Circuit Court
  - Mr. Michael Kiehne, Michigan Legal Help
  - Mr. Phillip Neuman, Couzens, Lansky, Fealk, Ellis, Roeder and Lazar
  - Mr. Curtis Robertson, Weber & Olcese PLC
  - Mr. James Schaafsma, Michigan Poverty Law Program
  - Honorable Karen Valvo, 15th District Court
  - Mr. Dean Viles, 90th District Court
  - Karen Wentz, 6th Circuit 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)
  - Mr. Michele Muscat, Trial Court Services (Staff)
  - Ms. Rebecca Schnelz, Trial Court Services (Staff)
  - Mr. Matthew Walker, Trial Court Services (Staff)
- Absent:
- Ms. Danielle Decator, 84th District Court
  - Ms. Laura Echartea, 36th District Court
  - Ms. Karen Haydett, 38th District Court
  - Honorable Scott Hill-Kennedy, 49th Circuit Court

Ms. Pamela Monville, 6th Circuit Court  
Ms. Sandra Moore, 46th Circuit Court  
Ms. Liz Stankewitz, 89th District Court  
Mr. Stuart Sandweiss, Sandweiss Law Center PC  
Mr. Jay Francisco, Judicial Information Services (Staff)  
Mr. Tim Schalk, Judicial Information Services (Staff)  
Ms. Stacy Westra, Trial Court Services (Staff)

## **District Court Session**

### **1. Minor Change**

#### **DC 109, Motion and Order for Escrow, Landlord-Tenant, Land Contract**

Land Contract was removed from the title of this form because this form does not apply to land contract.

### **2. CIA 07, Default Judgment, Civil Infraction**

The committee considered clarifying the notice on the bottom section of this form. Currently, the notice states, “You may have the right to set aside a default by requesting a hearing within 14 days of the mailing date. You must post a bond equal to the total fines and costs noted when requesting a hearing to set aside a default.” The notice language stems from MCR 4.101(D). The suggestor states that the current language is not an accurate representation of the court rule because it implies that you have the right to set aside a default.

The committee discussed whether or not the current language is an accurate representation of the court rule. Members agreed that the current language is technically accurate, but could be revised to clarify that setting aside the default is not a right. The committee revised the statement to “You may be able to have the default judgment set aside by filing a motion within 14 days of the mailing date. You must post a cash bond equal to the total fines and costs noted when filing a motion to set aside a default judgment.” The committee also added a citation to MCR 4.101(D).

The form was approved as revised.

- ### **3. DC 84, Affidavit and Claim, Small Claims** **DCI 84, Collecting Your Money from a Small Claims Judgment** **DC 85, Judgment/Dismissal, Small Claims** **DC 86, Demand and Order for Removal, Small Claims**

The committee considered including a link to Michigan Legal Help on these forms. The suggestor stated they refer individuals to Michigan Legal Help often and it would be beneficial to have a link on the form.

The committee agreed with the suggestion to add a link to Michigan Legal Help, but did not specify the location or language that should be present on each form. As such, SCAO staff will determine the location and language.

4. **DC 100a, Demand for Possession, Nonpayment of Rent, Landlord-Tenant**  
**DC 100b, Demand for Possession, Damage/Health Hazard to Property, Landlord-Tenant**  
**DC 100c, Notice to Quit to Recover Possession of Property, Landlord Tenant**  
**DC 100d, Demand for Possession, 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**

The committee reconsidered including an option for electronic service as allowed by MCL 600.5718. The committee previously considered this request in 2016 and concluded that the conditions for electronic service, including written consent to electronic service of the demand, would be difficult to set forth on the form and would require additional instruction sections and form sections. In addition, members thought it was unlikely electronic service would be used very often. The current suggestor stated that electronic service is becoming more common and the forms should accommodate the practice.

SCAO staff questioned whether or not electronic service should be accommodated on these forms because the upcoming e-filing system (MiFILE) may predominate electronic service. The committee pointed out that these forms are exchanged between a landlord and tenant before a case is filed—a case may or may not follow the use of one of these forms. As such, members agreed that an electronic service option should be added.

The committee added a checkbox stating “electronic service to the person in possession (who has consented in writing to such service) at the following electronic service address:  
\_\_\_\_\_.”

The forms were approved as revised.

5. **DC 102a, Complaint, Nonpayment of Rent, Landlord-Tenant**  
**DC 102b, Complaint, Damage/Health Hazard to Property, Landlord-Tenant**  
**DC 102c, Complaint to Recover Possession of Property**  
**DC 102d, Complaint, Termination of Tenancy, Mobile Home Park - Mobile Home Owner (Just-Cause Termination)**  
**New Form Request: Servicemembers Civil Relief Act Statement**

The committee considered modifying these forms to include an affidavit as required by the Servicemembers Civil Relief Act, 50 USC 3931. It was suggested that the landlord-tenant complaint forms be modified or that a new form be created to better satisfy the requirements of the federal Servicemembers Civil Relief Act (SCRA). Currently, DC 105, Judgment Landlord-Tenant contains a reference to the SCRA indicating that a default judgment shall not be entered except as provided by the Servicemembers Civil Relief Act.

Members agreed that the SCRA could be better incorporated into the SCAO-approved landlord-tenant forms. However, members were undecided on the best way to incorporate the required information into the forms. SCAO staff suggested creating a standalone form that can be used in multiple case types. The committee agreed with this suggestion. SCAO staff will draft a form for presentation at the 2020 workgroup meeting.

The form creation was tabled until 2020.

#### **6. DC 104, Summons, Landlord Tenant/Land Contract**

The committee considered adding checkboxes for “trespasser,” “mortgage foreclosure,” and “other” next to “Rental unit eviction” and “Land contract forfeiture.” The suggestor stated that there are times when the plaintiff is trying to evict a trespasser, family member, squatter, or other person. The suggestor stated that checkboxes for “Trespasser,” “Mortgage foreclosure,” and “Other” would help.

Members discussed the suggestion, but did not think the additional checkboxes would provide any benefits. The committee decided against the suggestion.

The form was not modified.

#### **7. DC 111a, Answer, Nonpayment of Rent, Landlord-Tenant DC 111b, Answer, Damage/Health Hazard to Property, Landlord-Tenant DC 111c, Answer to Complaint to Recover Possession of Property DC 111d, Answer, Termination of Tenancy, Mobile Home Park - Mobile Home Owner (Just-Cause Termination)**

The committee considered amending these forms to include certified, restricted delivery mail with return receipt as allowed by MCR 4.201(G)(1)(b). Currently, item 2 of these forms contain a checkbox for receipt of the complaint by personal service. The suggestor states that the forms should accommodate certified mail as well.

Members discussed the suggestion, as well as MCR 4.201(G)(1)(b) and the personal service box in item 2. Members were unclear as to why the personal service checkbox is present in item 2. Under MCR 4.201(G)(1)(b), a money claim must be dismissed or adjourned, unless service of process under MCR 2.105 is made, if the defendant does not file an answer to the

complaint. This form (DC 111) is the answer to the complaint. Further, MCR 2.105 allows for service of process by certified, restricted delivery mail with a return receipt.

The committee removed the personal service checkbox from item 2. The committee also pointed out that instruction D incorrectly states that the plaintiff can seek money damages only if personal service was achieved. The committee requested that SCAO staff correct this error.

The forms were approved as revised.

## **Joint Session**

### **8. Minor Changes**

#### **CIA 02, Judgment, Civil Infraction**

Citation to the Servicemembers Civil Relief Act was corrected to 50 USC 3931.

#### **CIA 07, Default Judgment, Civil Infraction**

#### **MC 06, Notice to Appear**

#### **MC 216, 14-Day Notice, Traffic**

The language regarding payment of fees and costs was replaced with a restatement of MCR 1.110.

#### **MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit)**

At the request of the Department of Treasury, a bullet was placed next to the "Plaintiff FE no./Social Security no." writing space to assist with data entry. In item 4, "plaintiff's attorney" and "plaintiff" were reversed to be consistent with the grey "Completed by court only" area.

### **9. MC 70, Request for Reasonable Accommodations and Response** **MC 70a, Review of Request for Reasonable Accommodations and Response**

The committee considered adding a note to MC 70 and MC 70a to clarify that these forms are used to request a sign language interpreter. The committee agreed that the note would be beneficial because individuals often mistakenly believe sign language interpreters equate with foreign language interpreters. The committee added the following to both forms in the area above the applicant information grid: "Note: For foreign language interpreters (except sign language) use form MC 81."

The committee also considered removing the parenthetical from item 3 on both forms that specifies examples of sign language that can be requested. SCAO staff noted that sign language technology changes frequently, so the parenthetical may not always reflect

appropriate options. Under the ADA, the requester must know and request the specific accommodation he or she needs. Therefore, the committee agreed that it is not necessary to include a list of examples for sign language. The committee removed the language in question from both forms. The committee also noted that the nomenclature is “accommodation” and not “accommodations.”

The committee considered draft language on MC 70a to modify the title of the order section by adding the words “To Review” at the end. The committee agreed that the modification helped to clarify that the decision reflected in the order portion was following a review and accepted the change.

The forms were approved as revised.

#### **10. MC 81, Request and Order for Interpreter** **MC 81a, Review of Request for Interpreter and Order**

The committee considered a suggestion to insert the words “Foreign Language” before “Interpreter” in the title and section headers of each form to clarify that the forms are only for requesting foreign language interpreters and not sign language interpreters. The committee approved the suggestion as well as adding a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

The committee also considered modifying item one on both forms to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1). Under the court rule, an interpreter may be appointed for various individuals for various hearings and the form does not specify the period of the appointment. SCAO staff noted that there have been issues with courts requiring parties to file a request prior to every hearing, which creates additional obstacles for those individuals. The committee agreed that clarifying the length of appointment would be helpful. The committee approved the draft language.

The forms were approved as revised.

#### **11. MC 01, Summons**

The committee considered modifying the proof of service to make clear that parties may not serve process of the complaint. See MCR 2.103(A). The suggestor stated that many *pro per* parties do not understand that they cannot serve the complaint.

Members agreed with the suggestion. The committee added the draft language, “I am not a party or officer of a corporate party (MCR 2.103[A])” to the affidavit of process server section of the proof of service. The committee also added a citation to MCR 2.103 to the first page of the form.

The form was approved as revised.

## **12. MC 01a, Summons and Complaint, Blank**

The committee considered modifying the title of this form to “Complaint” and adding a signature line.

SCAO staff explained that proposed modifications stem from changes to form MC 01. In September 2018, MC 01 was revised from a “Summons and Complaint” to only a “Summons” to comply with several court rule amendments. Previously, MC 01 was designed to capture information required to be in the complaint, like pending or resolved cases. The court rule amendments no longer require certain information to be placed in the complaint--instead it is case initiation information. As such, MC 01a can no longer be attached to MC 01 as additional pages of the “complaint”—MC 01 is not a complaint.

Members agreed with the suggested changes and the reasoning. SCAO staff asked if the form should simply be deleted because of the existence of form MC 04, Blank. Members disagreed with deleting MC 01a, citing that many pro per litigants use this form in district court.

The committee added a signature line and changed the title to “Complaint”.

The form was approved as revised.

## **13. MC 07, Default, Request, Affidavit, and Entry**

The committee considered replacing the affidavit portion of this form with a verification as provided in MCR 1.109(D)(3). Currently, the governing rule, MCR 2.603(A)(1), states that the party should provide an affidavit or otherwise state the facts that the party has failed to plead or otherwise defend in order for a clerk to enter a default. A proposed court rule change (ADM File 2002-37, September 27, 2018 Proposed Amendments) would replace the affidavit requirement with a verified statement under MCR 1.109(D)(3). The suggestor states that replacing the affidavit with a verification statement would ease the administrative burden for this form.

Members agreed with replacing the affidavit with a verification statement because the court rule language appears to allow it. Further, members thought the court rule change was likely to pass. Members also commented that MC 07a, Default Request, Affidavit, Entry, and Judgment (Sum Certain) should be modified if the court rule amendment is adopted.

The committee removed the affidavit from the form and replaced it with a verification statement. The committee also modified the title of the form to Default, Request, and Entry.

The form was approved as revised.

STAFF NOTE: On March 20, 2019, the Michigan Supreme Court entered an order amending MCR 2.603 to require a verification statement instead of an affidavit. As such, the affidavit on MC 07a was replaced with a verification statement.

#### **14. DC 85, Judgment/Dismissal, Small Claims**

##### **MC 09, Dismissal**

##### **New Form Request: Dismissal, Small Claims**

In 2018, this committee reviewed a suggestion to modify MC 09 to include “Magistrate” in the signature line to account for small claims cases. The committee did not agree with the suggestion because the suggestion could result in misuse of the form. Instead, members added a note to MC 09, stating that DC 85 should be used to dismiss a case, and modified the title of DC 85 to indicate it was used for dismissals. However, these changes did not account for voluntary dismissals in small claims cases.

As such, the committee considered creating a new small claims form for all types of dismissals or modifying MC 09 to allow a magistrate to sign it. Members were opposed to creating a new small claims dismissal form. Members stated that a new form would add another layer of complexity to what is supposed to be an easy process. The committee agreed with modifying MC 09 to allow magistrate to sign it when appropriate. Members were less concerned that the form would be misused.

The committee removed the note, which stated “For dismissal of a small claims action, use form DC 85.” The committee added “Magistrate (when authorized)” to the signature line.

The committee also discussed removing the dismissal section from form DC 85 in favor of using MC 09 for all dismissals. Members stated that the dismissal section should remain on the form because it is often used and is convenient. MC 09 can be used for voluntary dismissals or as an additional method of dismissing a case.

MC 09 was approved as revised. DC 85 was not revised.

#### **15. MC 09, Dismissal**

The committee considered revising this form to accommodate dismissals of counterclaims. Members discussed this proposal, but ultimately decided against adopting. The form is currently setup for dismissing a party, not dismissing specific claims. In order to accommodate dismissing claims, the form would require significant revisions. Members decided that the advantages did not outweigh the disadvantages of these revisions.

The form was not revised.

#### **16. MC 11, Subpoena**

The committee considered adding an additional copy of the proof of service to the subpoena packet. The suggestor stated that when a plaintiff is filling out the affidavit for judgment debtor examination in a carbonless form, the information bleeds through the front top half of the subpoena. The suggestor added that an extra copy of the affidavit for judgment debtor examination would eliminate this problem.

Members discussed this issue and stated that this is unlikely to be solved by modifying the form. The issue appears to have more to do with the construction and use of carbonless forms, more than the form's design. For that reason, the form was not changed.

The form was not revised.

#### **17. MC 20, Fee Waiver Request**

The committee considered several suggestions regarding this form.

- A. The committee considered removing "Do not write your SSN" from item 1 of the form. The suggestor stated that the line caption is not necessary because fee waiver requests are nonpublic documents and the caption could prevent a person from writing their case number on the line (if their case number is their SSN).

Members disagreed with the suggestion. The majority of public assistance programs no longer use a social security number as a case number. Previously, the Social Security Administration did, but has since changed that practice. Members stated that this form should not contain an individual's social security number if possible. For that reason, the form should continue to state "Do not write your SSN."

- B. The committee did not address this item because the issue was resolved in the January, 2019 version of the form.
- C. The committee did not address this item because the issue was resolved in the January, 2019 version of the form.
- D. The committee considered adding a new item 3 to the order section of the form to account for MCR 2.002(K). MCR 2.002(K) allows the court to conduct further inquiries reasonably necessary to prove indigence or financial hardship if the court has a reasonable belief that a request is inaccurate. Any hearing regarding these further inquiries must be on the record and the notice of hearing must indicate the specific issues subject to further inquiry.

Members commented that some judges use this rule to request more information but do not have a hearing. SCAO staff indicated a belief that subrule (K) was intended to require a hearing to request more information. However, the text of the rule does not appear to require a hearing to obtain more information. After discussion, members agreed that implementing MCR 2.002(K) on the form may be too difficult because of varying interpretations of the rule and the procedures that necessitate from those interpretations. For that reason, the committee did not adopt this suggestion.

- E. The committee considered adding a certificate of mailing section to this form to accommodate the requirement that the clerk provide a copy of the waiver and order to the applicant.

Members were not sure whether a certificate of mailing is necessary on this form, but thought it may be a good idea. Members commented that MC 20 is a required use form and adding a certificate of mailing would add work for courts. For that reason, the committee agreed not to add a certificate of mailing until it became necessary.

Although not on the agenda, the committee considered adding magistrate to the signature line of the order. Under MCL 600.8513, district court magistrates may waive court fees in any civil, small claims, or summary proceedings action until judgment has been entered. However, the amended fee waiver rule does not account for magistrates. Members stated that the form should account for magistrates because of the statute. The committee added “Magistrate (when authorized)” to the signature line of the order.

The committee also addressed the public comment from Ms. Gail Michel of the Clare County Circuit Court. Ms. Michel suggested adding a table of the Federal Poverty Guideline to the back of the form to help people identify their poverty level. Members considered this suggestion, but ultimately decided against it. MCR 2.002 allows the court to waive fees if a person is below 125% of the Federal Poverty Guideline or if paying the fees would be a financial hardship for the person. Because the financial hardship option is not limited to any specific income level, a person does not need to know if they fall below the 125% level. Therefore, the proposed table would not provide significant benefit.

The form was approved as revised.

#### **18. MC 49, Objections to Garnishment and Notice of Hearing**

The committee considered revising item 2 of this form for clarify. The suggestor stated that the wording of item 2 may lead individuals to objecting to the underlying judgment. The suggestor stated that the line should be rephrased to “I object to the written statement/balance set forth in the garnishment because that amount is wrong.” Item 2 is present on this form to accommodate MCL 600.4012(5)(a).

The committee disagreed with the suggestor and thought that item 2 is an accurate restatement of the statute.

The form was not revised.

- 19. New form request: Notice of Limited Scope Appearance**  
**New form request: Notice of Withdrawal from Limited Scope Appearance**  
**New form request: Objection to Withdrawal from Limited Scope Appearance and Notice of Hearing**  
**New form request: Motion for Service upon Limited Scope Client and Notice of Hearing**  
**New form request: Motion to Determine Scope of Representation and Notice of Hearing**

The committee considered creating forms to accommodate the 2017 court rule amendments for limited scope representation. See MCR 2.117.

Members had a robust discussion as to whether to create these forms. Some members argued that the SCAO does not have a responsibility to create these forms and the State Bar of Michigan may provide these forms to attorneys. Other members argued that creating these forms help provide access to lawyers for individuals who need a lawyer for a limited time. Members agreed that the SCAO should create an objection to withdrawal from limited scope appearance form to assist self-represented litigants. Members also agreed that the Motion for Service upon Limited Scope Client and Motion to Determine Scope of Representation should not be created at this time.

Ultimately, the committee was split on creation of the notice of limited scope appearance and notice of withdrawal from limited scope appearance forms. SCAO staff stated that the SCAO will have more internal discussion to decide if the forms will be created and the committee agreed with that approach.

STAFF NOTE: After internal discussion, the SCAO decided to create the following forms:

- Notice of Limited Scope Appearance
- Notice of Withdrawal from Limited Scope Appearance
- Objection to Withdrawal from Limited Scope Appearance and Notice of Hearing

## **Circuit Court Session**

### **20. CC 269, Order Regarding Driver’s License Restoration After Review of the Record**

The committee discussed modifying this form to accommodate 2018 PA 99. Members agreed that the proposed draft is helpful and modifications to CC 269 are necessary. But, the committee was unable to review the proposed draft because of time constraints. Members suggested that it may be better to split the proposed draft into multiple forms and asked SCAO staff to look into the issue.

The committee tabled this item for further review.

### **21. CC 382a, Order after Hearing on Show Cause for Violating Valid Personal/Foreign Protection Order** **CC 384, Order after Hearing on Violation of Valid Personal/Foreign Protection Order**

In 2018, the Legislature passed 2018 PA 67, which changed the statutes regarding expunction and destruction of biometric data. The amended statute states that the arrest record and biometric data shall be expunged/destroyed and the arrest record shall be removed from ICHAT if the charge or charges are dismissed before trial. MCL 28.243(8). A court order is required to effectuate this section. MCL 28.243(9). The Michigan State Police have interpreted subsection (9) to require a specific order directing the destruction of the arrest record and biometric data.

The committee considered modifying these forms to comply with the requirements of 2018 PA 67. Members pointed out that MCL 28.243(8) refers only to crimes, but violating a personal protection order is criminal contempt. Members agreed that criminal contempt is not the same as a crime—for example, a crime is initiated by a criminal complaint whereas criminal contempt is not. Further, MCL 28.243 specifically references criminal contempt in several subsections and is not referenced in MCL 28.243(8). For these reasons, the committee did modify the forms.

The forms were not revised.

### **22. CC 383, Order Denying or Dismissing Petition for Personal Protection Order**

The committee considered adding a new item 3 stating, “Insufficient evidence is alleged showing that irreparable harm would result from the delay required to have a hearing and give notice of a hearing.” The suggestor states that the new option would more accurately reflect denying a petition under MCR 3.705(A)(2).

Members agreed that the suggestion would be helpful, but commented that the structure of the form doesn't allow for easy integration of another denial reason. SCAO staff offered to rework the form and add the suggested language. The committee agreed.

**23. CC 377, Petition for Personal Protection Order (Nondomestic)**  
**CC 395, Petition for Personal Protection Order (Nondomestic Sexual Assault)**

The committee considered replacing "husband and wife" on these forms. Members agreed with the suggestion and several other forms have been changed to accommodate same-sex couples.

The committee replaced "husband and wife" with the word "married" in item 1 of both forms.

The forms were approved as revised.

**24. New form: Motion to Transfer Wireless Telephone Number**  
**New form: Order to Transfer Wireless Telephone Number**

The committee considered creating forms for MCL 600.2950n and 600.2950o. The SCAO is required to create these forms under MCL 600.2950n(4). Members agreed with the proposed forms as drafted.

The forms were approved as revised.