



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

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January 16, 2020

TO: Michigan Court Forms Committee, Civil Workgroup

FROM: Rebecca A. Schnelz, Forms and Resources Analyst

RE: Agenda and Materials for **March 12, 2020 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing

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### **PROPOSALS FOR COMMENT**

Below is the proposed agenda for the March 12, 2020 meeting of the Michigan Court Forms Committee, Civil Workgroup. Please provide any comments or feedback by clicking on the comment button next to each item and including the agenda item in the body of the e-mail.

Agenda items are published for a 45-day comment period. Comments received on proposed agenda items will be posted daily. Proposed agenda items and comments will remain posted until the committee meeting is held.

### **District Court Session**

#### **1. Minor Changes**

##### **[DCi 84, Collecting Your Money From a Small Claims Judgment](#)**

The information on page 2 of this form regarding the fee for a garnishment will be corrected to accurately reflect that there is a \$6 disclosure fee for a garnishment of an income tax refund and a \$35 disclosure fee for periodic garnishments.

**2. CIA 02, Judgment, Civil Infraction**

In 2019, the committee modified the notice portion at the bottom of this form regarding rights to appeal, withdraw an admission, or to request that a default be set aside. The specific language modified dealt with the motion to set aside a default. The intent of the change was to make the language more accurately reflect the language of the court rule because the current language implied a right to set aside a default. The language was changed. At the same time the language in the notice regarding bond was modified to match the bond language on CIA 07, Default Judgment, Civil Infraction. As modified, the bond language reads, “You must post a bond equal to the total fines and costs noted when requesting a hearing to set aside a default.”

A suggestion was received that the language regarding bond should not have been changed and that the new language is creating difficulty for individuals wishing to appeal who do not realize they have to post a bond.

Prior to 2019, the notice portion of this form read,

NOTICE TO THE DEFENDANT: If this judgment is the result of an informal hearing, you may appeal the decision within 7 days of the judgment date. If this judgment is the result of a formal hearing, you may appeal the decision within 21 days of the judgment date. If this judgment is based on an admission of responsibility, you may file a written request to withdraw your admission within 14 days of the admission. If this judgment is the result of a default, you may file a motion to set aside the default within 14 days of the date the judgment was served. A bond equal to the amount of the judgment is required in all instances.

It should be noted that the bond information on CIA 07 refers only to a motion to set aside a default, whereas the notice language on CIA 02 refers to appeal, withdrawing an admission, or default. Bond is applicable to all three situations pursuant to MCR 4.101(E) and (H).

Should the bond language on this form be modified to read, “A bond equal to the amount of the judgment is required in all instances”?

**3. DCi, 84, Collecting Your Money From a Small Claims Judgment**

a. A suggestion was received to correct language on page two of the form regarding how long a periodic garnishment remains in effect. Currently, the form says that a “periodic garnishment is valid until the expiration date on the writ or until the judgment, interest, and costs are paid off, whichever occurs first.” However, under

MCL 600.4012(1), a garnishment of periodic payments remains in effect until the balance of the judgment is satisfied.

The suggestor proposed revising the sentence to read that a “periodic garnishment is valid until the judgment, interest and costs are paid off, or further court order, whichever occurs first.”

Should the language be modified?

- b. It was suggested that language should be added to this form to clarify that an attorney cannot do post judgment collections on behalf of a plaintiff in a small claims case. The suggestor stated that this has been a point of confusion in the past and a simple explanatory sentence would be of benefit to the plaintiffs.

According to *In Re Goehring*, 184 Mich App 360, 365 (1990), attorneys may not file postjudgment proceedings in the small claims division. In that case, the attorney argued that MCL 600.8408 only applied to the filing, prosecution, or defense of litigation and did not exclude attorneys from participating in small claims postjudgment proceedings. The Court of Appeals declined to adopt that reading of the statute and instead held that the legislature intended small claims "prosecutions" and "litigation" to include postjudgment proceedings. Additionally, the court held that neither the provisions of MCL 600.8409 or MCR 4.301 confers the right to counsel once a small claims judgment has been entered.

Form DCi 84 is required by MCL 600.8409, which also specifies information that must be contained in the form:

- (2) The state court administrator shall prepare instruction sheets clearly explaining in plain English how, and under what circumstances, a plaintiff in whose favor a judgment has been entered may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment...

Should language be added to this form to clarify that an attorney cannot provide representation in post-judgment actions in a small claims case?

#### 4. [DC 90, Petition Regarding Impoundment of Motor Vehicle](#)

A suggestion was received to modify this form to clarify that this petition may be filed by a vehicle owner even when they have not received the required notice regarding its abandonment. The suggestor stated that, in its current form, item 5 on the form could be

confusing to a petitioner in situations where they never received notice but are aware of what happened to the vehicle.

Should item 5 be modified to an optional item on the form or otherwise modified to indicate it is to be completed if applicable and adding appropriate language to the instructions?

5. [\*\*DC 100c, Notice to Quit to Recover Possession of Property, Landlord-Tenant\*\*](#)  
[\*\*DC 102c, Complaint to Recover Possession of Property\*\*](#)  
[\*\*DC 111c, Answer to Complaint to Recover Possession of Property\*\*](#)

A suggestion was received to add back a reference to the Protecting Tenants at Foreclosure Act (PTFA) to DC 100c. The reference was removed after the law sunset in 2014. Section 304 of Title 3 of the [\*\*Economic Growth, Regulatory Relief, and Consumer Protection Act of Public Law 115-174\*\*](#) repealed the sunset and restored PTFA's §§ 701-703, effective June 23, 2018.

The language that was previously removed from the form appeared as part of the note and stated, "Except for a 90-day notice given under the authority of Public Law No. 111-22, § 702; 123 Stat 1660 after foreclosure of the premises, if the lease agreement does not state otherwise, the landlord/landlady must give notice equal in time to at least one rental period." The form currently reads, "Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period."

The suggestor stated that adding a notation regarding PTFA might also be appropriate for forms DC 102c and DC 111c.

Should the language be reinstated on DC 100c? Should language regarding PTFA be added to DC 102c and DC 111c?

6. [\*\*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\*\*](#)

A suggestion was received to modify item 7 in all three forms to make them consistent and to improve the wording to more clearly incorporate statutory language regarding the premises being kept fit in compliance with the requirements of both state and local units of government.

Item 7 on each form currently reads “The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease.” DC 102a qualifies this statement with the parenthetical instruction, “Must be checked unless modified by lease.” DC 102b qualifies item 7 by including “if applicable” in parentheses before the statement. There is no qualifying statement on DC 102c. The instruction sheet for all three forms instruct the filer to, “Check item 7 only when applicable.”

The suggestion is to modify all three forms so that item 7 reads, “The plaintiff declares that this residential property was kept fit for the use intended, has been kept in reasonable repair during the term of the lease and in compliance with the applicable health and safety laws of the state and of the local unit of government where the premises are located.”

The suggestor states that this would bring item 7 into conformity with the requirements of MCL 554.139:

- 1) In every lease or license of residential premises, the lessor or licensor covenant:
  - (a) That the premises and all common areas are fit for the use intended by the parties.
  - (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.
- 2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
- 3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

The language in item 7 has been substantially the same since 1980. The suggestor notes that a variety of municipalities across the state have passed ordinances regarding rental housing that provide for additional rights, duties, and obligations on the parties in a landlord-tenant relationship in the intervening 40 years. The suggestor further notes that modification of the language is necessary to help make clear to landlords and the court that a robust inquiry into the compliance of the plaintiff is necessary for a judgment to enter in cases where compliance is an issue.

Should the forms be modified?

7. **[DC 107, Application and Order of Eviction, Landlord-Tenant/Land Contract](#)**

It has been suggested that a modification should be made to the language under the Order of Eviction section of this form. Specifically, the suggestor notes that the order is addressed only to a “Court Officer.” The suggestor noted the recent changes to MCL 600.5744 regarding individuals who may serve an eviction now include a “...court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located....” MCL 500.5744(1).

Should the language in the order section that currently reads, “To the Court Officer,” be updated to more accurately reflect the range of individuals that can serve the order? Is the caption under the signature line in the return section still accurate?

**JOINT SESSION**

8. **[Minor Changes](#)**

**[CIA 07, Default Judgment, Civil Infraction](#)  
[MC 216, 14-Day Notice, Traffic](#)**

The notice regarding fines, costs, and other financial obligations will be modified to include the complete wording MCR 1.110.

9. **[MC 11, Subpoena, Order to Appear and/or Produce](#)**

A suggestion has been made that this form requires modification due to the recent revisions to [MCR 2.305\(A\)\(2\)](#) that were part of the recent updates to the discovery process. Specifically, concern was expressed as to whether the current form meets all the court rule requirements for a document only subpoena. In addition, it was suggested that a notice should be included for third parties that they have to produce or object within 14 days of service and that if copies of documents are requested then reasonable copying costs must be paid. A question was also raised whether the current form can be used for inspection of tangible things and entry upon land.

Does the form require modification for use with MCR 2.305(A)(2)?

**10. [MC 14, Garnishee Disclosure](#)**

A suggestion was received to add language to the instructions to the garnishee on this form to remind the garnishee to verify that the SSN or financial account number to be garnished matches the information for the individual they are actually garnishing. The suggestion was received from an individual at a debt collection firm. It was noted that when a garnishee garnishes the wrong individual (e.g., someone with the same name that works for them) because they don't verify information, it can be a very difficult situation to fix. The suggestor stated that the plaintiff firms are frequently called by the improperly garnished person to fix the situation, but due to federal laws that regulate the disclosure to third parties of information concerning debt, the problem can be difficult to correct.

The suggestion was made to add the following language to item 1 on page 3 (How to Fill Out the Garnishee Disclosure Form) in bold or underlined type:

Confirm that the defendant's social security number, employee ID, or account number listed on the garnishment match the information you have on file.

Should an instruction be added to the form?

**11. [MC 15a, Order Regarding Installment Payments](#)**

It was suggested that language should be added to this form detailing where the installment payments are to be sent, similar to the language contained in the second half of item 4 on MC 12, [Request and Writ for Garnishment \(Periodic\)](#).

Should language directing where payments are to be sent be added to the form?

**12. [MC 55, Claim of Appeal](#)**

- a. A suggestion was made to modify the language in item 1 of the form to insert the word "final" before the word "order." Currently, the item reads, "\_\_\_\_[Name]\_\_\_\_ claims an appeal from a final judgment or order..." The suggestor pointed to MCR 7.103(A)(1) and MCR 7.203(A)(1) as authority. The purpose of the modification would be to act as a reminder to the user regarding what is appealable by right.

Should the form be modified?

- b. A modification to this form was suggested in relation to item 4. It was suggested that cases involving a FOIA issue should be added as an option because of the statutory direction to expedite such appeals. The purpose of item 4 is to identify cases that require some type of expedited process pursuant to MCR 7.204(D). FOIA cases are not identified in this rule, but MCL 15.240(5) requires appeals of FOIA denials to be “expedited in every way.”

Should FOIA issues be added to item 4?

**13. [MC 282, Domestic Violence Screening for Referral to Mediation](#)**

A new form for domestic violence screening is required to be developed as part of the new FOC alternative dispute resolution court rule, MCR 3.224. The decision has been made to not use or modify MC 282 for the purpose outlined in MCR 3.224 and instead create a form more specifically tailored to the screening for the FOC ADR process.

A suggestion was made that a note should be placed on MC 282 to clarify that the form should not be used for purposes under MCR 3.224.

Should a note be added to the form?

**14. [MC 306, Substitution of Attorney](#)**

A suggestion was received to modify MC 306 and remove the option for entry of the order ex parte. The suggestor questioned why entry of the order ex parte is currently allowed and suggested as an alternative that signature lines for opposing counsel should be added to the form.

The substitution of an attorney is addressed by MCR 2.117(C)(2):

Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

Should the form be modified?

**15. Notice of Limited Scope Appearance  
Notice of Withdrawal From Limited Scope Appearance  
Objection to Withdrawal From Limited Scope Appearance and Notice of Hearing**

In 2019, 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 would 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 a motion for service upon limited scope client and a motion to determine scope of representation should not be created.

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

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](#)

Drafts of the forms are provided for the committee's review.

## **CIRCUIT COURT SESSION**

**16. [CC 269, Order Regarding Driver's License Restoration after Review of the Record](#)**

In 2019, the committee discussed modifying this form to accommodate [2018 PA 99](#). A proposed draft was reviewed and members agreed modifications to CC 269 were necessary, however 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.

This item is being brought back to the committee for discussion of the proposed draft and suggestion for multiple forms.

[Draft provided.](#)