



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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PROPOSALS FOR COMMENT

Below is the proposed agenda for the March 19, 2020 meeting of the Michigan Court Forms Committee, Domestic Relations 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.

1. **Minor Change**

[CCFD 26, Notice of Request to Enter Consent Judgment](#)

The title of the form will be corrected to reflect that it also applies to a consent order, i.e., “Notice of Request to Enter Consent Judgment/Order.” The proof of service will be modified to include the word “order” where appropriate. The form will also be modified to replace the word “defendant” with “Party B” in the proof of service in keeping with the collaborative law forms standard.

[Draft provided.](#)

2. **CC 320, Domestic Relations Verified Financial Information Form**

A. A suggestion was received to modify a question regarding self-employment at the bottom of the first page of the form. The item now reads, “[i]f self-employed, list each owner’s draw you have made during the past twelve months.” The suggestor inquired as to why each draw had to be listed and noted that for some self-employed individuals, almost every one of his or her expenses would be a draw.

Is asking for each draw to be listed necessary or burdensome? Is there a more appropriate way to request the information that is needed?

- B. A concern was raised that the signature portion of the form may get missed by individuals who are filling it out for custody and/or support only cases. These individuals do not need to complete the property portions of the form and the concern was that they would not understand they needed to sign the form at the end after the property related questions.

Is this a concern? Is there a way to ensure anyone completing it will understand that the form always needs to be signed?

3. **CCFD 03, Petition of Parent for Custody of Surrendered Newborn Child**
CCFD 04a, Order Determining Maternity/Paternity of Surrendered Newborn Child
CCFD 06, Order Determining Custody of Surrendered Newborn Child

A suggestion was received that these forms needed to be corrected to take into account situations where DNA testing is not required under the applicable statute.

MCL 712.11(2) provides the following:

Unless the birth was witnessed by the emergency service provider and sufficient documentation exists to support maternity, in a petition for custody filed under this chapter, the court shall order the child and each party claiming maternity to submit to blood or tissue typing determinations or DNA identification profiling....

Should the forms be modified to take into account situations where no DNA testing is required? Are there other forms that should be modified for this reason?

4. **CC-MLH 413, Judgment of Divorce with Children**

A suggestion was made to modify item 13 of the form to more thoroughly reflect the particular reason why a Uniform Support Order is not being entered.

Pursuant to MCR 3.211(F)(4)(b), prior to signing any judgment or order concerning a minor or a spouse that is not accompanied by a Uniform Support Order, the court must

determine that an explanation as to why there is no USO included in the judgment or order.

The suggestor stated that the current language is not sufficient when there is a controlling support order issued by another state. The suggestor proposed substituting the following language:

No uniform support order is required because support cannot presently be ordered in this action. This court recognizes that in case number _____, the _____ Court in _____ has issued the controlling support order that already requires _____ to pay support for the child(ren) in this case, and that _____ currently retains exclusive jurisdiction.

Should the form be modified to include the suggested language?

5. **FOC 1a, Friend of the Court Grievance**

A suggestion was made to update the instructions on this form to remove any references to carbon copy documents for the reason that FOC offices no long use the carbon copy forms.

Draft provided.

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

A. A suggestion was made to modify item 2 of the forms so that the language on the form mirrors the child support manual language regarding reasonable cost of insurance. The suggestor stated that the current language is somewhat misleading and individuals paying support or their employers often try to get around this requirement in the order by arguing that the total cost of insurance is over 6% of the payor's gross income.

The 2017 version of the Child Support Formula at 3.05(A) states:

A reasonable cost to a parent for providing health care coverage for the children does not exceed 6 percent of the providing parent's gross income.

In applying this standard, the cost of providing health care coverage is the parent's net cost of adding the children to the parent's coverage (e.g., difference between self-only and family coverage) or adding the children to the existing coverage.

The relevant checkbox option language under item 2 on both forms currently provides that the health-care coverage is available at a reasonable cost, “not to exceed 6% of the plaintiff’s/defendant’s gross income.”

Should the language on the form be modified to more fully explain how to apply the relevant standard?

- B. In [2019 PA 26](#) and [2019 PA 27](#), the legislature modified language in the Support and Parenting Time Enforcement Act and the Friend of the Court Act relative to health-care coverage for children. Among the changes was the insertion of definitions for “private health care coverage” and “public health care coverage.” MCL 552.602(aa) and (bb). In addition, MCL 552.605a(2) was modified to require health care coverage that is accessible to the child and available to one or both parents at a reasonable cost, and language regarding parents who are self-employed was removed. The following language was added:

...The court shall not require both parents to provide health care coverage under this subsection unless the parents already provide coverage or both parents agree to provide coverage. This subsection does not prevent the court from exercising its discretion to order health care coverage based on the child’s needs and the parents’ resources.

Based on the changes to the statute, are there changes that should be made to the wording or options available under item 2? Should an option be added for ordering both parties to maintain private health care coverage where they have agreed to do so? Should language be added to allow the court to specify whether the coverage is public or private?

7. [FOC 10b, Uniform Spousal Support Order](#)

It has been suggested that item 4 of this order should be modified to accommodate changes to the tax treatment of spousal support under the Tax Cuts and Jobs Act of 2017 (TCJA). Item 4 is currently an optional selection on the form and reads, “[f]or tax

purposes, the payments will be deductible to the payer and included in the income of the payee.”

The IRS website provides the following information regarding modifications to the taxable status of alimony:

...Beginning Jan. 1, 2019, alimony or separate maintenance payments are not deductible from the income of the payer spouse, or includable in the income of the receiving spouse, if made under a divorce or separation agreement executed after Dec. 31, 2018.

This also applies to a divorce or separation agreement executed on or before Dec. 31, 2018, and modified after December 31, 2018, as long as the modification:

- changes the terms of the alimony or separate maintenance payments; and
- states that the alimony or separate maintenance payments are not deductible by the payer spouse or includable in the income of the receiving spouse.

On the other hand, generally alimony or separate maintenance payments are deductible from the income of the payer spouse and includable in the income of the receiving spouse, if made under a divorce or separation agreement executed on or before Dec. 31, 2018, even if the agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding paragraph.

<https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019>

Should item 4 on the form be rewritten? Is additional clarifying information needed?

8. FOC 22, Employer’s Disclosure of Health Insurance and/or Income Information

A request was received to add a space for the employee’s telephone number in the information grid. The individual making the request noted that it would be good practice to update information on the payor whenever possible.

Should the form be modified?

9. FOC 23, Verified Statement

It was suggested that this form should be revised to include additional information regarding the parties that would be of assistance should the parties relocate out of the country. The suggestor noted that this information should be obtained at the start of the case before it is forgotten or no longer available/obtainable. The suggested additions include, but are not limited to:

1. The parties identifying social numbers, i.e., Social Insurance Number, etc.;
2. Driver's license numbers from all countries;
3. Acknowledged citizenship in other countries or tribes; and
4. Passport/immigration numbers.

Should space for this information be added to the form?

10. MC 416, Uniform Child Custody Jurisdiction Enforcement Act Affidavit

A suggestion was received to remove the notary block on this form and replace it with language from MCR 1.109(D)(3)(b). MCR 1.109(D)(3) provides:

- (3) Verification. Except when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit. If a document is required or permitted to be verified, it may be verified by
 - (a) oath or affirmation of the party or of someone having knowledge of the facts stated; or
 - (b) except as to an affidavit, including the following signed and dated declaration:

“I declare under the penalties of perjury that this _____ has been examined by me and that its contents are true to the best of my information, knowledge, and belief.” Any requirement of law that a document filed with the probate court must be sworn may be also met by this declaration.

MCL 722.1209 requires the following:

- (1) Subject to the law of this state providing for confidentiality of procedures, addresses, and other identifying information, in a child-custody proceeding, each party, in its first pleading or in an attached sworn statement, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last 5 years, and the

names and present addresses of the persons with whom the child has lived during that period.

The suggestor states that requiring a notary signature creates an undue burden on litigants who, for various reasons, do not have the resources to obtain a notary.

In reviewing the history of the form, SCAO staff noted that at its March 4, 2010, meeting, the committee discussed the authority of deputy clerks to notarize someone's signature. The minutes reflect the following:

Committee members agreed that any clerk deputized as a clerk of the court can administer oaths in his or her capacity as an official of the court...To reduce the confusion as to whether the clerk of the court can sign an affidavit, the standard phrase "Notary public/Deputy court clerk" was added beneath the signature line on form MC 229. This standard phrase appears on most SCAO-Approved forms containing an affidavit but has been overlooked in a few instances. Therefore, the committee agreed these other similarly-affected forms should likewise be changed when they are revised for other purposes.

MC 416 has not been revised since March 2008. Had it come up for revision, the deputy clerk designation would have been added beneath the signature line in the notary block. This would allow parties to sign the document before either a deputy clerk or a notary.

Should the form be revised to replace the notary block with the penalties of perjury statement? Alternatively, should "deputy clerk" be added beneath the signature line in the notary block as previously discussed?

ADDITIONAL ITEMS FOR COMMENT

11. **[FOC 89, Order Regarding Custody and Parenting Time](#)**

This form was modified to accommodate use as a proposed order under MCR 3.224, the FOC alternative dispute resolution court rule recently created in ADM File No. 2018-13.

12. [FOC 124, Domestic Violence Screening](#)

The development of this form was required by MCR 3.224, the FOC alternative dispute resolution court rule recently created in ADM File No. 2018-13.

13. [FOC 125, Alternative Dispute Resolution Summary Report](#)

The development of this form was required by MCR 3.224, the FOC alternative dispute resolution court rule recently created in ADM File No. 2018-13.